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No. 04-473

In The Supreme Court of the United States

GIL GARCETTI, FRANK SUNDSTEDT, CAROL NAJERA and COUNTY OF LOS ANGELES,

Petitioners,

vs.

RICHARD CEBALLOS,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX VOLUME III OF III (Pages 380-537)

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD CEBALLOS, Plaintiff, vs. GIL GARCETTI, Individually, and in his Official Capacity, FRANK SUNSTEDT, Individually, and in his Official Capacity, CAROL NAJERA, Individually, and in her Official Capacity, COUNTY OF LOS ANGELES, A Municipal Corporation, and DOES 1 through 10, Inclusive, Defendants.	CASE NO: CV 00-11106 (AHM) (AJWx) **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF DANILO J. BECERRA** ***[PLAINTIFF'S STATEMENT IN OPPOSITION TO DEFENDANTS' SEPARATE STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW AND APPENDIX OF EXHIBITS ARE FILED CONCURRENTLY HEREWITH]***

DATE: January 28, 2002
TIME: 10:00 a.m.
PLACE: Courtroom 14

COMES NOW Plaintiff RICHARD CEBALLOS in opposition to Defendants GIL GARCETTI, FRANK SUNSTEDT and CAROL NAJERA's Motion for Summary Judgment set for hearing on January 28, 2002.

For the following reasons, Plaintiff submits that the present motion should be denied:

1. There are material issues of facts as to whether Defendants NAJERA and SUNSTEDT initiated a campaign of harassment against Plaintiff following his exercise of his First Amendment right to report police misconduct to his supervisors.

2. Further there is a dispute of material facts as to whether defendant GARCETTI ratified the conduct of Defendants NAJERA and SUNSTEDT when he was informed of the retaliation.

This opposition is based upon this Notice of Opposition; the Memorandum of Points and Authorities; the Declarations of Danilo J. Becerra; Terry White; Jaime Hernandez; Plaintiff's Response to Defendants' Statement of Genuine Issues in Opposition to Defendants' Motion for Summary Judgment, filed concurrently herewith; the Appendix filed concurrently herewith; the attached exhibits; the files and records in this case; and any further evidence that may be adducted upon a hearing on said motion.

Plaintiff submits that triable issues of fact exist and, therefore, Defendants GIL GARCETTI, FRANK SUNSTEDT

and CAROL NAJERA's present Motion for Summary Judgment should be denied, in its entirety.

DATED: January 10, 2002
MORENO, BECERRA, GUERRERO & CASILLAS
A Professional Corporation

BY: /s/ Danilo J. Becerra
DANILO J. BECERRA, Esq.
Attorney for Plaintiff
RICHARD CEBALLOS

DATED: January, 1, 2002
LAW OFFICES OF HUMBERTO GUIZAR

BY: /s/ Humberto Guizar
HUMBERTO GUIZAR, Esq.
Attorney for Plaintiff
RICHARD CEBALLOS

DATED: January 10, 2002
LAW OFFICES OF LUIS CARILLO

BY: /s/ Luis Carillo
LUIS CARILLO
Attorney for Plaintiff
RICHARD CEBALLOS

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants GIL GARCETTI, FRANK SUNSTEDT and CAROL NAJERA presently move this Court for an order granting them summary judgment in this matter.

II. STATEMENT OF FACTS

Plaintiff works for the Los Angeles County District Attorney's Office ("COUNTY"). CEBALLOS Depo at 10:17-19. Plaintiff commenced working for Defendant COUNTY in 1989. See, CEBALLOS Depo., at 13:12.

Sometime in 1997 or 1998, Plaintiff began working in the Pomona Branch of Defendant COUNTY's offices. See, CEBALLOS Depo., at 15:8-10. About a year after Plaintiff began his employment at the Pomona Branch of Defendant COUNTY'S offices, Plaintiff was assigned to work as a calendar deputy. See, CEBALLOS Depo., at 15:18-22. Plaintiff continued in this assignment until approximately May or June of 2000. See, CEBALLOS Depo., at 18-22.

As a calendar deputy, Plaintiff had supervisorial and other functions that trial deputies did not have. See, CEBALLOS Depo., at 51:13-52:6.

At the time, Defendants CAROL NAJERA ("NAJERA" herein) and FRANK SUNSTEDT ("SUNSTEDT" herein) immediately supervised Plaintiff. See, CEBALLOS Depo. at 16:19-22.

One to two weeks prior to March 2, 2000, attorney Richard Escobedo, defense counsel for one of the defendants in the *People v. Cuskey*, Case Number KA045491, case, approached Plaintiff to discuss concerns he had about the veracity of the Sheriff's Department's deputies on that case regarding evidence. See, CEBALLOS Depo., at 59:10-25; 60:7-9. Plaintiff, in an effort to fulfill his duties as a district attorney, conducted an investigation of the matter and concluded there were serious problems with the warrant by which certain "evidence" was obtained against one of the *People v. Cuskey* defendants. See,

CEBALLOS Depo., at 69:7-74:17. At this point, Plaintiff presented his findings to Defendants SUNSTEDT and NAJERA who both agreed that the warrant in question posed problems. See, CEBALLOS Depo., at 74:18-23.

On or about March 2, 2000, Plaintiff prepared a memorandum to Defendant SUNSTEDT regarding his opinions as to the veracity of the testimony of the officers in the *People v. Cuskey* case. See, CEBALLOS Depo., at 44:13-16. Plaintiff presented this memo assuming that, based on the memo, the case would be dismissed. See, CEBALLOS Depo., at 87:20-22. Defendant SUNSTEDT, concerned about the Sheriff's Department's reaction to the report, instructed Plaintiff to edit the language of the report to not make it so "accusatory." See, CEBALLOS Depo., at 90:21-24.

On or about March 9, 2000, plaintiff CEBALLOS met with Defendants SUNSTEDT and NAJERA, Deputy District Attorney Steven Gallon, Captain Binkley, and Sheriff Lieutenant Barstow to discuss the above-mentioned memo Plaintiff authored. See, CEBALLOS Depo., at 55:12-20. This meeting was held at the direction of Defendant SUNSTEDT at the demand of the Sheriff's Department. See, CEBALLOS Depo., at 56:1. During this meeting, Lieutenant Barstow attacked Plaintiff for the memorandum he prepared in the course and scope of his employment. See, CEBALLOS Depo., at 98:5-8. Captain Binkley expressed that he wanted the case to proceed in order to avoid a civil suit. See, CEBALLOS Depo., at 105:10-17. All of Plaintiff's work in preparing this memo and recommendation for dismissal was pursuant to his belief that he, as a Deputy District Attorney, had to make an "independent decision as to whether or not to go forward with the case." See, CEBALLOS Depo., at 99:21-23.

Plaintiff, in a zealous pursuit of his client's interests, still looked for a way around the irregularities and misrepresentations in the search warrant and, not finding any, decided he had to dismiss the case See, CEBALLOS Depo., at 104:9-18.

Within a week of the March 9th meeting, Defendant SUNSTEDT demoted Plaintiff from his calendar deputy position. See, CEBALLOS Depo., at 45:17-18. Upon the termination of his duties as calendar deputy and demotion to trial attorney, another Grade III Deputy District Attorney replaced him in the department in which he served as calendar attorney. See, CEBALLOS Depo., at 139:18-20.

Plaintiff informed Defendants SUNSTEDT and NAJERA that defense counsel subpoenaed him and intended to use him for the traverse hearing. See, CEBALLOS Depo., at 121:7-8.

Plaintiff, following his duties under *Brady v. Maryland,* (1963) 373 U.S. 83; 83 S.Ct. 1194, informed Defendant NAJERA that the memos Plaintiff had prepared regarding his opinions of the search warrant should be turned over to the defense. See, CEBALLOS Depo., at 121:9-11. Defendant NAJERA, in clear violation of *Brady,* instructed Plaintiff to edit the memos to reflect only the statements of detective Walls. See, CEBALLOS Depo., at 121:14-16. Mr. George Knoke of the District Attorney's office also informed Plaintiff that he should not turn over *Brady* material to the defense because the police may sue him. See, CEBALLOS Depo., at 264:17-21

A few days before the hearing that Plaintiff had been subpoenaed to testify in regarding the warrant, Defendant NAJERA summoned Plaintiff into her office. See, CEBALLOS Depo., 124:3-4. When Plaintiff informed her he was

going to testify truthfully about his opinions, she threatened him. See, CEBALLOS Depo., at 124:22-125:1. Furthermore, at the hearing on the traverse motion, according to Judge Milton, Defendant NAJERA was rude and hostile toward Plaintiff. See, CEBALLOS Depo., at 190 16-24. Defendant SUNSTEDT, though being Plaintiff's direct supervisor, gave him the "silent treatment" in retaliation for using his reporting the misconduct to exercise his prosecutorial discretion. See, CEBALLOS Depo., at 220:14-23.

Toward the end of August to the beginning of September 2000, Defendant NAJERA summoned Plaintiff into her office and informed Plaintiff that his position as trial attorney was being changed. See, CEBALLOS Depo., at 24:20-23. At this time, Defendant NAJERA informed Plaintiff that he could not remain in the Pomona Branch unless he resigned himself to filing misdemeanors. See, CEBALLOS Depo., at 25:11-14. This position was one typically assigned to junior Deputy District Attorneys and, as such, demeaning to plaintiff CEBALLOS. See, CEBALLOS Depo., at 27:4-15. This forced Plaintiff's transfer to the El Monte Branch of the District Attorney's Office. See, CEBALLOS Depo., at 29:10-12. This was done as a retaliatory act of "Freeway Therapy," a practice of punishing a deputy district attorney who does not play by the rules by giving him an assignment necessitating a long commute. See, CEBALLOS Depo., at 27:16-24.

In further retaliation for his decision, Defendant NAJERA stripped Plaintiff of the one murder case he was handling at the time, and gave it to a Grade II Deputy with no experience in murder case. See, CEBALLOS Depo., at 141:20-144:25. The purpose behind taking this murder case from Plaintiff was to affect his ability to promote within the District Attorney's Office. See CEBALLOS Depo., at 146:14-23. Defendants further denied

Plaintiff the opportunity to work on any other murder cases. See, CEBALLOS Depo., at 148:2-3.

The next incident of retaliation occurred in about October of 1999. See, CEBALLOS Depo., at 150:18-22. Even though Plaintiff scored highly on the promotional test and had more experience than other deputies, those deputies were chosen and Plaintiff was not. See, CEBALLOS Depo., at 156:2-16. The decision to promote Plaintiff lied uniquely in the hands of Defendants SUNSTEDT. See, CEBALLOS Depo., at 159:19-160:11.

Plaintiff suffered this retaliation as a result of exercising his First Amendment Rights, following his professional and ethical duties to the court as a prosecutor, Defendant GARCETTI allowed the retaliatory conduct in this case, despite knowledge that plaintiff had exercised his First Amendment Rights and followed his professional and ethical duties to the court as a prosecutor indisclosing police perjury.

III. LAW

A. PLAINTIFF'S SPEECH IN REPORTING SUSPECTED POLICE PERJURY TO HIS SUPERVISOR NAJERA AND DISTRICT ATTORNEY SUNSTEDT WAS PROTECTED BY THE FIRST AMENDMENT SINCE IT CONCERNED A MATTER OF VITAL PUBLIC CONCERN

1. Plaintiff As An Experienced Prosecutor Who Had Conducted A Thorough Investigation of the Deputies' Conduct Had An Absolute Right to Report His Findings Without Fear of Retaliation.

A violation of section 1983 may occur when an employee is retaliated against for speech protected by the

First Amendment. *Connick v. Myers,* 461 U.S. 138, 145, 103 S.Ct. 1684, 1689 (1983). *Mt. Health City Board of Education v. Doyle,* 429 U.S. 274, 97 S.Ct. 568 (1983).

"Speech concerning public affairs is more than self-expression, it is the essences of self government. Accordingly, speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Connick v. Myers,* 461 U.S. 138, 145, 103 S.Ct. 1684, 1689 (1983). A public employee's First Amendment Rights are violated if his employer takes an adverse employment action against the employee because of that employee's protected speech. *Mt. Health City Board of Education v. Doyle,* 429 U.S. 274, 283, 97 S.Ct. 568, 574 (1983).

In order to prevail on Plaintiff's First Amendment claim, a plaintiff must initially prove that his speech was constitutionally protected, i.e. That his statements "substantially involved matters of public concern." *Johnson v. Multnomah County,* 48 F.3d 420, 422 (9th Cir.), cert. denied, 515 U.S. 1161, 115 S.Ct. 2616 (1995); *Connick v. Myers,* 461 U.S. at 146, 103 S.Ct. at 1689. Speech involves matter of public concern when it can fairly be considered to relate to "any matter of political, social or other concern to the community." *Connick v. Myers,* 461 U.S. at 146, 103 S.Ct. at 1690; *Johnson v. Multnomah County,* 48 F.3d at 422. Whether an employee's speech addresses a matter of public concern must be determined by the *content, form,* and *context* of a given statement, as revealed by the whole record. *Connick v. Myers,* 461 U.S. 147-48, 103 S.Ct. at 1690. For speech to be of a public concern, it need *not to be communicated publicly. Givhan v. Western Line Consolidated School Dist.,* 439 U.S. 410, 415, 99 S.Ct. 693, 696-97 (1979) (Freedom of speech not "lost to the public employee

who arranges to communicate privately with his employer rather than to spread his views before the public").

In making its determination, the Court must arrive at *balance* between the interests of the public employees as a citizen, in commentating upon matters of public concern and the interests of the State, as an employer, in promoting the efficiency of the public services it performs through employees. *Pickering v. Board of Education of Township High School District,* 391 U.S. 563, 568, 88 S.Ct. at 1734-35 (1968). The State's burden in justifying a particular adverse employment action varies depending upon the nature of the employee's expression *Connick v. Myers,* 461 U.S. at 150, 103 S.Ct. at 1691. A stronger showing may be necessary if the employee's speech more substantially involved matters of public concern. *Id.* at 152, 103 S.Ct. at 1692-93.

Moreover, a public employer has *no legitimate interest* in covering up *mismanagement or corruption. Johnson v. Moltnomah County,* 48 F.3d 420, 427 (9th Cir.) cert. denied, 515 U.S. 1161, 115 S.Ct. 2616 (1995).

Plaintiff CEBALLOS in late April, 1990, and early March, began an investigation of the truthfulness of the allegations in the affidavit used to secure a search warrant by Los Angeles Sheriff's Deputies in *People v. Cuskey,* No KA04541. CEBALLOS first was contacted by Defense counsel while working as a calendar deputy. Plaintiff carefully reviewed the file and went to the scene where the officers had allegedly made their observations. After viewing a videotape of the scene and reading the officers's averments in the declaration he was convinced that the officer had deliberately misled the magistrate that issued the warrant. Additionally, CEBALLOS discovered that one

of the defendants had sued one of the Deputies and that this information should have been made known to the magistrate but was not disclosed.

Plaintiff CEBALLOS actually called Deputy SUNSTEDT and NAJERA into his office, showed them the videotape and explained the falsehoods that were in the declaration. SUNSTEDT agreed that there were problems with the warrant's declaration and authorized CEBALLOS to seek immediate release of one of the Defendants that was in custody and instructed him to prepare a disposition memorandum so that the case could be dismissed.

CEBALLOS prepared the disposition memorandum but the case was not dismissed when the Sheriff's officials voiced their opposition to such a dismissal and expressed concerns that they could be sued. There was no further or new investigation conducted by Defendant SUNSTEDT and NAJERA to justify continuing the prosecution with the questionable evidence.

Plaintiff CEBALLOS was required to attend a meeting with the involved Sheriff Deputies where he was berated and told he was acting like a defense lawyer. Plaintiff was not allowed to respond to the Deputies' accusations nor did Defendants NAJERA or SUNSTEDT attempt to defend his actions.

When it became apparent that CEBALLOS would not back away from the results of his investigation of the *Cuskey* case it was taken over by his supervisor NAJERA and efforts were made by her to force CEBALLOS to alter his report before turning it over to the defense pursuant to *Brady v. Maryland*. When CEBALLOS refused to mislead the defense by changing the report, a redacted copy was supplied upon his insistence.

Plaintiff's speech addressed matters of concern because it related to matters of political, social or other concern to the public. See, *Connick v. Myers*, 461 U.S. at 146, 103 S.Ct. at 1689. Specifically, Plaintiff's speech involved activities by law enforcement that is a essential concern to the public. The integrity and truthfulness of law enforcement officers is always a vital concern to the public especially in March of 2000, following Los Angeles Police Officer Raphael Perez's revelations as to the widespread police corruption within the Rampart unit of the Los Angeles Police Department. See, *Voigt v. Savell*, 70 F.3d 1552, 1562 (9th Cir. 1995) cert. denied, 517 U.S. 1209, 116 S.Ct. 1826 (1996) (allegations of criminal wrongdoing and abuse of power involve matters of inherent public concern); *Hyland v. Wonder*, 972 F.2d 1129, 1137 (9th Cir. 1992) (memorandum exposing, *inter alia*, abuses, potential civil rights violations, and incompetence of public officials addressed matters of public concern). The conduct of the Sheriff deputies reported by CEBALLOS also implicated civil rights violations of the Fourth Amendment Rights of the Defendants in *Cuskey*.

Defendants' reliance upon *Brewster v. Board of Education*, 149 F. 3d 971, 981 (9th Cir. 1998) for the proposition that plaintiff cannot establish his statements to supervisors involved matters of public concern is misplaced. Recently, the Ninth Circuit made clear in *Hufford v. McEnaney*, 249 F.3d 1142 (9th Cir. 2001) that in a good-faith whistleblowing context, the breath of one's audience is irrelevant. *Id.* at 2497 3rd at 1151. The court noted it would be absurd to extend First Amendment protection only to those whistleblowers who immediately appear on the local news. *Id.* 249 F.3d at 1151. The Court found in *Hufford* that plaintiffs reporting the downloading of

pornographic materials by fellow firefighters lies to his supervisors at the core of the First Amendment regardless of the audience. *Hufford v. McEnaney,* 249 F.3d 1142.

California courts have held that district attorneys have a First Amendment Right to keep the public informed, respond to media questions, and ask other law enforcement agencies to conduct their own investigation. *Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1108, 1113-1115; 57 Cal.Rptr. 207. The California Supreme Court made clear in a similar situation that also involved allegations of false statements made by law enforcement officers to obtain a search warrant that any contrary holding would impermissibly chill the exercise of First Amendment Rights by government employees as stated in Gov. Code §§ 26505.5, which states that a district attorney may sponsor, or participate in any project to improve the administration of justice. See *Id.*, at 1116.

This case mirrors *Bradbury,* which clearly states that, like the *Bradbury* district attorney Plaintiff had a First Amendment Right to keep the public informed, issue the report, respond to media questions, and ask other law enforcement agencies to conduct their own investigation. In this case, Plaintiff CEBALLOS had a First Amendment Right to keep the public informed, issue his report, respond to the Court's and defendant's counsel's questions, and ask the District Attorney's Office, as the law enforcement agency that it is, to conduct its own investigation into his belief that the officers in this case were lying.

Defendants' retaliation against him for exercising his First Amendment Rights had nothing to do with the prosecution of a case, a key element in a finding of immunity.

In this case, Plaintiff wrote the memo expressing concern about the veracity of the officers in this case pursuant to his duties as a prosecutor. See, CEBALLOS Depo. at 44:13-16; 69:7; 74:14. Based on these concerns, and pursuant to his duties, he turned this memo over to defense counsel pursuant to *Brady v. Maryland,* (1963) 373 U.S. 83, 83 S.Ct. 1194, 102 L.Ed.2d 215. Despite the illegal order of Defendant NAJERA to not produce this memo to defense counsel (See, CEBALLOS Depo., at 120:21; 122:4), Plaintiff, in fulfilling his duties as a prosecutor, produced the memo and testified truthfully at trial.

Granting this motion would chill deputy district attorneys from performing their prosecutorial functions. It will advise all deputy district attorneys that, no matter what their professional opinion as a prosecutor, if they do not play by the rules, no matter how illegal the rules are, they will be subject to the liability of harassment and retaliation by their superiors and that said harassment and retaliation is subject to immunity.

Even though plaintiff spoke on the matter of public concern, the Defendants may be entitled to summary judgment if they show that the speech so severely damaged office harmony and the working relationship, that the government's interest in promoting an effective workplace outweighs the Plaintiff's First Amendment Rights. *Johnson v. Multnomah, supra,* at 426, 48 F.3rd at 426, quoting *Hyland v. Wonder,* 972 F.2d at 39. The employer bears the burden of proving that the balance of interests weighs in its favor. *Johnson v. Multnomah, supra,* at 426. The more tightly the First Amendment embraces the speech, the more vigorous a showing of disruption must be made. *Hyland v. Wonder,* 972 F.2d at 1139.

Defendants have not shown any disruption or injury to its legitimate needs that would justify retaliation against Plaintiff CEBALLOS for exposing possible police corruption and perjury. The Defendants are required to show both a disruption and actual injury to its legitimate interests. *Johnson v. Multnomah, supra,* 48 F.3d at 427.

The Ninth Circuit has recognized:

> "[t]he First Amendment balancing test [of Pickering] can hardly be controlled by a finding that disruption did occur. An employee who accurately exposes rampant corruption in her office no doubt may disrupt and demoralize much of the office. But it would be absurd to hold that the First Amendment generally authorizes corrupt officials to punish subordinates who blow the whistle simply because the speech somewhat disrupted the office." *Id.* quoting *O'Donnell v. Yanchulis,* 875 F.2nd. 1059, 1062 (3rd Cir. 1989).

In this case, Defendants cannot claim that they have a legitimate interest in covering up police perjury or corruption and cannot justify retaliation against whistleblowers as a legitimate means of avoiding the disruption that necessarily accompanies such exposure. See, *Johnson v. Multnomah, supra,* 483 F.3d at 427. Nor are the district attorney's office legitimate interests injured if the individual defendants were undermined by truthful statements exposing their own wrongdoing in bowing to the pressure of the Sheriff's Department. If the Court were to hold otherwise, some of the most important public employee speech exposing government corruption, wrongdoing or incompetence would be left outside the First Amendment aegis. *Id.*, quoting *Hyland v. Wonder, supra,* 972 F.2d at 1138; see also, *Voigt,* 70 F.3d at 1562 (where allegations

involve criminal wrongdoing, burden on employer in demonstrating that its interests outweigh the First Amendment interest of employee is "correspondingly onerous").

Defendants contend that Plaintiffs statements regarding the falsehoods in the affidavit of the Sheriff were untrue and proven so by the Superior Court's denying the Motion to Traverse the Warrant. Firstly, plaintiff was in no way reckless to ascertain the truth. He reviewed the file, went to the scene, reviewed the videotape made of the scene and clearly determined that there were misstatements made to the magistrate that issued the warrant. He then showed the videotape to other district attorneys in the office who all agreed that the declaration was false, and when he explained the situation to Defendant SUNSTEDT and NAJERA, Defendant readily agreed that there were problems with the warrant and immediately authorized the release of one of the Defendants from custody. It was only after the Sheriff's Captain and Deputies began objecting to the dismissal and implying that Plaintiff was acting like a defense lawyer, and that the Sheriffs could be sued that SUNSTEDT changed his decision about dismissing the case and proceeding with the questionable evidence. There was no new evidence presented nor a scene investigation such as was conducted by Plaintiff, but a decision by Defendants in bowing to pressure from the Sheriff's Department. There is nothing to suggest that Plaintiff did anything other than conduct a thorough and neutral evaluation of the facts that was concurred initially both his supervisors.

The disagreement with the Court as to the falsity of the declarations did not relieve the District Attorneys assigned to the case to make their own assessments and

act accordingly. Recent history in Los Angeles County has demonstrated a whole scale failure to recognize rampant perjury by the Superior Court judiciary in the Rampart scandal.

B. THE LAW WAS CLEARLY ESTABLISHED THAT A STATE EMPLOYEE SUCH AS PLAINTIFF CEBALLOS COULD NOT BE SUBJECTED TO RETALIATION FOR REPORTING POLICE PERJURY AND CORRUPTION TO HIS SUPERIORS, THEREFORE, THERE IS NO QUALIFIED IMMUNITY AVAILABLE TO THE DEFENDANTS.

No reasonable official in the position of Defendants NAJERA, SUNSTEDT, and GARCETTI could have reasonably believed that it was permissible to retaliate against the Plaintiff CEBALLOS for reporting what he believed to be police perjury and corruption in the *Cuskey* matter. Although the Defendants correctly cite authorities in the Ninth Circuit that discuss the difficulty of establishing clearly established rights in the context of a state employee exercising First Amendment Rights. Defendants fail to point out that this Circuit has drawn a clear line for government employers where the employee's speech involves wrongdoing or corruption, the disruption generated by an employee's accurate exposition of such conduct should not be factored into the *Pickering* balance. *Johnson v. Multnomah County, supra,* 48 F.3d at 427 (9th Cir.) *Moran* relied upon by the Defendants makes clear that the government must show that speech concerned with unlawful activities must be highly disruptive to justify any restriction. *Moran v. Washington,* 147 F.3d 839, 849 n.6 (9th Cir. 1998).

Defendants recognize that as the immunity defense has evolved, it provides ample protections to all but the plainly incompetent or those who knowingly violate the law. *Malley v. Briggs,* 475 U.S. 336, 341 (1986). In instant case, Defendants knowingly violated Plaintiff's First Amendment Rights and are not entitled to any protection.

C. THE CAMPAIGN OF HARASSMENT CONDUCTED BY DEFENDANTS CANNOT BE OBJECTIVELY REASONABLE WHERE THE PURPOSE WAS TO RETALIATE AGAINST DEFENDANT HAVING EXERCISED HIS CONSTITUTIONAL RIGHTS.

The Defendants contend that the actions they took were objectively reasonable in light of the facts and circumstances confronting Defendants when they acted with regard to the Plaintiff CEBALLOS and therefore there can be no violation of Plaintiff's constitutional rights. *Saucier v. Katz,* 533 U.S. 194, 121 S.Ct. 2151 (citing *Graham v. Connor,* 490 U.S. 386, 397) (1989).

Defendants contend that they took no adverse employment actions towards Plaintiff following his investigation and reporting of police perjury in the *Cuskey* matter. Defendants contend creating a hostile work environment, ignoring him, assigning him to a former municipal court for "freeway therapy" all involve actions that would have occurred in the normal course of events. In order for Defendants to establish that their conduct was objectively reasonable, they must show they would have taken the same actions as to the plaintiff's employment states even in the absence of protected expression. *Mt. Health City Board of Education v. Doyle, supra,* 274, 287; *Schwatzman v. Valenzuela,* 846 F.2d 1212 (9th Cir.) (1988).

Following the Plaintiff's protected expression and his preparation of the disposition memorandum he was immediately subjected to a hostile working environment. Plaintiff was forced to attend the meeting with the Deputies involved in the perjured affidavit where he was ridiculed and berated. Plaintiff who had previously been evaluated and recognized as a outstanding deputy district attorney was forced to watch as his supervisors allowed the Sheriff's Department Deputies to intimidate the Defendants into abdicating their responsibilities to independently evaluate the evidence and proceed with evidence that was highly questionable. Considerations wholly irrelevant to the criminal justice process were used by the Sheriffs' to insist upon continuing the criminal case, i.e., fear of a civil lawsuit. Plaintiff was not allowed to say anything with regards to the improprieties that had occurred in the investigation during the meeting with Sheriff's personnel.

Plaintiff's work environment immediately became hostile as Defendants proceeded to threaten Plaintiff with adverse consequences should he continue insisting that the Deputy's declaration was false and he would quickly find himself being given the "silent treatment" from his immediate supervisors. Plaintiff's prestigious position of calendar deputy was taken away and difficult murder case is taken away from him to be tried by a lesser deputy with no experience in handling murder cases. Plaintiff is offered to do low level work filing misdemeanors should he chose to remain in the Pomona Branch of the Court.

Defendants attempt to offer explanations for each of the adverse actions that take place but careful examination of the facts indicates that when the hostility did not work to alter Plaintiff's exercise of his First Amendment

speech rights Defendants increased the consequences against him.

There was no prior taking away of murder cases from any deputy district attorney to extend experience to lesser experienced attorneys in the office. There was no need to any additional filing Deputies in the Rio Hondo Branch of the District Attorney's office. Declarations submitted by the Deputies at Rio Hondo indicate clearly there was no need for Plaintiff to do any filing and after he was removed following the election of Steve Cooley, a part-time Deputy was used to replace Plaintiff at the Court.

Plaintiff had earned the right to be promoted to a Grade IV Deputy District Attorney. Defendant SUNSTEDT held the key to that promotion since it was only in his communication to the director George Knoke that would have allowed his name to be submitted to District Attorney GARCETTI for promotion. There was no way possible he would have been fairly considered for promotion with the pattern and practice of retaliation initiated and maintained by Defendants against Plaintiff.

Courts have traditionally held summary judgment is inappropriate when questions of motive predominate in the inquiry about how big a role the protected behavior played in the employment decision. *Peacock v. Duval,* 694 F.2d 644, 646 (9th Cir 1982). Plaintiff CEBALLOS need only prove that his protected activities were a substantial or motivating factor in the adverse employment actions taken against him. *Allen v. Scribner,* 812 F.2d 426, 433 (9th Cir. 1987). Plaintiff has done so in this opposition.

D. DEFENDANT GARCETTI RATIFIED THE CONDUCT OF NAJERA AND SUNSTEDT.

Plaintiff CEBALLOS attempted to handle the retaliation that had occurred through a formal grievance. He sought the help of the Mexican American Bar Association and its President James Blancarte while the grievance was still pending before District Attorney Director George Knoke. It is undisputed that before a formal decision was announced by Knoke, Blancarte spoke with GARCETTI. GARCETTI claims he merely told Blancarte the grievance procedure would handle the matter. Blancarte claims GARCETTI said he would look into it or would handle it. Within days of Plaintiff communicating with Blancarte and being advised GARCETTI had been informed, CEBALLOS' grievance regarding the retaliation of the *Cuskey* matter was denied.

Where government officials adopt and expressly approve of the acts of others who caused the constitutional violation, there is liability. *Hammond v. County of Madera*, 859 F.2d. 797, 802-03 (9th Cir. 1988), disapproved on other grounds in *L.W. v. Grubbs*, 92 F.3d 894 (9th Cir. 1988). In *Fuller v. Oakland*, 47 F.3d. 1522, 1526 (9th Cir. 1995). Judge Poule writing for a unanimous panel held that there was sufficient evidence to support a finding of ratification; when the Chief of Police approved a one-sided and biased investigation which held no harassment. This is what occurred here. Defendant GARCETTI having been advised of the actions of CEBALLOS and being made aware of the concerns of a prominent bar association of the retaliation claims did nothing to prevent the continued constitutional violation of plaintiff's rights and thus ratified the behavior of Defendants NAJERA and SUNSTEDT.

E. PLAINTIFF HAS PROVEN THAT THE DEFENDANTS' CONDUC[T] WAS OUTRAGEOUS AND SHOULD BE ALLOWED TO PROCEED AGAINST THEM ON HIS STATE CAUSES OF ACTION.

Defendant has demonstrated that he was a diligent and ethical prosecutor for the people of the County of Los Angeles. In order to fulfill his obligations, he found it necessary to go into the field and investigate the honesty of his investigating officers to insure that he was meeting his ethical obligations. As a direct result of his actions, he was insulted, threatened, harassed at work, ostracized and demoted. He was ordered to change evidence so as to possibly mislead defense counsel but refused. Plaintiff resisted all attempts to force him to participate in illegal and unethical behavior and suffered financially and emotionally for his refusal.

The emotional distress suffered by him was so bad that he considered resigning from his career as a professional prosecutor with the office, a career he had held since law school. Prior to the incidents of March, 2000, Plaintiff had loved his job and enjoyed representing the people. He was so disturbed and emotionally upset about the events that engrossed him following his disclosures and efforts to insure that justice was done in the *Cuskey* matter, he took sleeping pills and lost enthusiasm to prosecute cases.

The Defendants' conduct was outrageous under the standard set forth in the case cited by Defendants. See, *Cervantes v. J.C. Penney Co.*, 24 Cal.3d 579, 156 Cal.Rptr. 198 (1979). In *Cervantes*, the court held conduct is outrageous where it exceeds all bounds of that usually tolerated in a civilized community. Subjecting Plaintiff to endure

emotional distress for having exercised his First Amendment Rights and for protecting the Fourth Amendment Rights of an accused citizen exceeds all bounds tolerated by a civilized and free society.

Defendants' argument that there is immunity under California Government Code section 821.6 is incorrect. Plaintiff's injury was a direct result of the employment actions taken against him by Defendants and Defendant GARCETTI's ratification of the employment actions and is not conduct for which Government Code section 821.6 is directed.

IV. CONCLUSION

In light of the above, Plaintiff respectfully asserts that Defendants GARCETTI, FRANK SUNSTEDT and CAROL NAJERA's present motion should be denied in its entirety.

Respectfully submitted,

DATED: January 10, 2002

MORENO, BECERRA,
GUERRERO & CASILLAS
A Professional Corporation

BY: /s/ Danilo J. Becerra
DANILO J. BECERRA, Esq.
Attorney for Plaintiff
RICHARD CEBALLOS

DATED: January, 10, 2002

LAW OFFICES OF
HUMBERTO GUIZAR

BY: /s/ Humberto Guizar
HUMBERTO GUIZAR, Esq.
Attorney for Plaintiff
RICHARD CEBALLOS

DATED: January 10, 2002

LAW OFFICES OF
LUIS CARILLO

BY: /s/ Luis Carillo
LUIS CARILLO
Attorney for Plaintiff
RICHARD CEBALLOS

DECLARATION OF DANILO J. BECERRA

I, DANILO J. BECERRA, declare:

1. I am an attorney duly licensed to practice before all the courts in the State of California. I am a partner with the Law Offices of Moreno, Becerra, Guerrero & Casillas, attorneys of record for Plaintiff RICHARD CEBALLOS. I have personal knowledge of the facts contained herein and if called upon could and would competently testify thereto.

2. Attached hereto and incorporated herein by reference as exhibits are true and correct copies of the following documents as identified below:

Exhibit 1: Declaration of Michael Grossbard

Exhibit 2: Declaration of Terry L. White

Exhibit 3: Declaration of Jaime Hernandez

Exhibit 4: Partial Deposition Transcript of Richard Ceballos

Exhibit 5: Partial Deposition Transcript of Frank Sunstedt

Exhibit 6: Partial Deposition Transcript of Carol Najera

Exhibit 7: Partial Deposition Transcript of Gilbert Garcetti

Exhibit 8: Partial Deposition Transcript of Dinko Bozanich

Exhibit 9: Declaration of James E. Blancarte

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 10th day of January 2002, at Montebello, California.

/s/ Danilo J. Becerra
DANILO J. BECERRA, Declarant

DANILO J. BECERRA, ESQ, SBN 56526
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Attorneys for RICHARD CEBALLOS

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD CEBALLOS, Plaintiff, vs. GIL GARCETTI, individually, and in his Official Capacity, FRANK SUNSTEDT, Individually, and in his Official Capacity, CAROL NAJERA, Individually and in her Official Capacity, COUNTY OF LOS ANGELES, A Municipal Corporation, and DOES 1 THROUGH 10, Inclusive, Defendants.	CASE NO: CV 00-11106 (AHM) (AJWx) **PLAINTIFF'S APPENDIX OF EXHIBITS IN SUPPORT OF OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** *[PLAINTIFF'S STATEMENT IN OPPOSITION TO DEFENDANTS' SEPARATE STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW IS FILED CONCURRENTLY HEREWITH]* DATE: January 28, 2002 TIME: 10:00 a.m. PLACE: Courtroom 14

COMES NOW Plaintiff RICHARD CEBALLOS and submits his Appendix of Exhibits in Support of Opposition to Defendants GIL GARCETTI, FRANK SUNSTEDT and CAROL NAJERA's Motion for Summary Judgment set for hearing on January 28, 2002.

Exhibit 1:	Declaration of Michael Grossbard
Exhibit 2:	Declaration of Terry L. White
Exhibit 3:	Declaration of Jaime Hernandez
Exhibit 4:	Partial Deposition Transcript of Richard Ceballos
Exhibit 5:	Partial Deposition Transcript of Frank Sunstedt
Exhibit 6:	Partial Deposition Transcript of Carol Najera
Exhibit 7:	Partial Deposition Transcript of Gilbert Garcetti
Exhibit 8:	Partial Deposition Transcript of Dinko Bozanich
Exhibit 9:	Declaration of James E. Blancarte

Respectfully submitted,

DATED: January 10, 2002 MORENO, BECERRA, GUERRERO & CASILLAS
A Professional Corporation

BY: /s/ Danilo J. Becerra
DANILO J. BECERRA, Esq.
Attorneys for Plaintiff
RICHARD CEBALLOS

DATED: January 10, 2002 LAW OFFICES OF HUMBERTO GUIZAR

BY: /s/ Humberto Guizar
HUMBERTO GUIZAR, Esq.
Attorney for Plaintiff
RICHARD CEBALLOS

DATED: January 10, 2002 LAW OFFICES OF LUIS CARILLO

BY: /s/ Luis Carillo
LUIS CARILLO
Attorney for Plaintiff
RICHARD CEBALLOS

EXHIBIT 1

DECLARATION OF MICHAEL GROSBARD

I, MICHAEL GROSBARD, state and declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am a Deputy District Attorney employed by the County of Los Angeles.

2. If called upon to testify, I could competently testify to the matters stated herein of my own personal knowledge.

3. I am currently assigned to the District Attorney's office in Alhambra, California.

4. On or about September 16, 2000, I submitted a Memorandum to Mr. George Knoke, the Bureau Director of the District Attorney's office, with regard to the Grievance filed by Richard Ceballos against Frank Sunstedt and Carol Najera.

5. The Memorandum, among other items, included my conversations with Ms. Carol Najera and Richard Ceballos at the Pomona Court house during March and April, 2000. The Memorandum also included my observations of Richard Ceballos and Ms. Carol Najera during this time period, and the interaction of Ms. Najera with Mr. Ceballos.

6. I attach the Memorandum, dated September 16, 2000, and incorporate the Memorandum herein by reference as it accurately describes my conversations and observations during that time period.

I declare, under penalty of perjury that the foregoing is true and correct.

Executed on January 9, 2002, at Alhambra, California.

/s/ Michael Grosbard
MICHAEL GROSBARD

MEMORANDUM

TO: George Knoke, Bureau Director

FROM: Michael Grosbard, Deputy D. A.

RE: Grievance of Richard Ceballos

DATE: September 16, 2000

In March, 2000, Richard Ceballos asked to meet with me to discuss a problem he was having with Assistant Head Deputy Carol Najera. At our meeting, Ceballos told me about the case of *People v. Cuskey,* and a memorandum he had written in regard to the search warrant in that case. This was the first I heard of that case and the possible fabrication of probable cause in the search warrant affidavit.

At our meeting, Ceballos requested advice as to Najera's request that he rewrite his memorandum before it was turned over to the defense attorneys in that case. I told Ceballos that the proper way to proceed in such a situation is to redact, by blacking out, those parts of the memorandum that we believed the defense was not entitled to. By proceeding in this manner, rather than rewriting the memorandum, the defense is not mislead into thinking they have the entire memorandum, and they can make the appropriate motions to get the redacted part of the memorandum, which can he presented to the judge *in camera* for review. Najera should have been aware of this procedure, particularly as it was an issue in *People v. Menendez*, a case that Najera assisted in prosecuting.

Ceballos further briefed me on the entire case and the actions he took. It was clear that Mr. Ceballos was attempting to discharge his duty in a diligent and ethical manner. Ceballos went to the scene to personally investigate whether the affiant's assertions were possible. Ceballos called the affiant to discuss the affidavit, and the affiant stated he made a mistake in the affidavit with regard to the questioned assertions. The affidavit sought permission to search Cuskey's property for stolen car parts, yet a narcotics sniffing canine was employed in the search, and the only thing found was narcotics. Ceballos then wrote the memorandum explaining why he thought the case should be dismissed. Afterwards, Ceballos learned that one of the involved deputies had been sued by Cuskey, a key fact that had been omitted from the affidavit.

I personally reviewed the affidavit and the additional information that Ceballos had obtained, and I also concluded that there were obvious material misrepresentations and omissions, per *Franks v. Delaware*.

Ceballos also informed me of the meeting held in Head Deputy Frank Sundstedt's office, where the deputies and their superiors berated Ceballos, and Sundstedt's failure to intervene. Finally, Ceballos informed me that the deputies' superiors expressed their concern that a law suit might be filed against their department if the case was dismissed.

After this meeting, Ceballos kept me informed of what transpired in the *Cuskey* case. Ceballos told me that he was called as a defense witness, and that Najera treated him in a very aggressive and hostile manner during cross-examination. Ceballos told me shortly after the hearing that Najera was furious with him both before and after his testifying, and told him that he should just "shut up."

This treatment did not end with Ceballos' testimony. In early April, 2000, Ceballos and I were assigned as co-calendar deputies for one of the two master calendar courts that were beginning in Pomona. While Ceballos was doing the calendar with me, I assigned a case, *People v. Wu, Modasia, et al.*, to one of our low level trial deputies, Steve Gallon. Gallon complained to Najera that he did not want to handle the case, and thought we should give the defendants a more lenient disposition. Najera contacted Ceballos, who was familiar with the case. Ceballos disagreed in disposing of the case for less than it was worth. Najera then assigned the case to Ceballos to try without discussing this with me. (It should be noted that this case was ultimately dismissed after defense counsel and the investigating officer were indicted by federal authorities for extorting defendants in this and other similar cases. The federal authorities had suspicions that deputy district attorneys might be involved in these scams, due to the lenient dispositions the defendants had been receiving.)

I went to talk to Najera about this situation, and, for no apparent reason, she repeatedly criticized Ceballos as not being a good lawyer or calendar deputy. I repeatedly told Najera that Ceballos was an excellent calendar deputy, and that a large part of our success in doing the master calendar court was due to Ceballos' experience and the fact that defense counsel trusted Ceballos and considered him fair and reasonable as a result of his handling his own calendar court in Pomona for a significant period of time. Najera not only would not acknowledge that Ceballos was doing a good job, she would not stop making critical comments about Ceballos, although she had no specific comments to make about his handling of any particular cases.

Shortly after this conversation, Najera's negative attitude toward Ceballos was readily apparent in her daily interaction with him. She would ignore him in the hallways, giving him the silent treatment. Eventually, Head Deputy Frank Sundstedt began displaying the same attitude towards Ceballos as Najera, and he also would not speak to Ceballos unless absolutely necessary.

To my knowledge, there was not any source of friction between Najera and Sundstedt and Mr. Ceballos other than the stance that Ceballos took in the *Cuskey* case.

EXHIBIT 2

DECLARATION OF
DEPUTY DISTRICT ATTORNEY TERRY L. WHITE

1. I, TERRY L. WHITE, declare under penalty of perjury that I am an attorney duly licensed to practice law in the State of California, and that I am currently employed as

deputy district attorney for the Los Angeles County, District Attorney's office. I have personal knowledge of all facts stated herein, and if I were called as witness to testify I would and could competently testify thereto.

2. In September of the year 2000 I was the acting supervisor of deputy district attorney, Richard Ceballos, when he was assigned to work for me as a filing deputy in the Rio Hondo Municipal Court, located in El Monte, California. In that year I had one part time filing deputy and one full time filing deputy working before Richard Ceballos joined me.

3. Prior to Mr. Ceballos joining me as a filing deputy I never complained or ever made any formal or informal requests to Frank Sundstedt, Carol Najera, or any other supervising district attorney, that the District Attorney's office in the Rio Hondo courthouse had a need for two full time filing deputies. In fact, I was satisfied with having one full time filing deputy and one part time filing deputy, as these were adequate attorney resources for the District Attorney's office to meet the demands of this branch court.

Dated: 1-10-02

/s/ Terry L. White
Terry L. White
Declarant

EXHIBIT 3

DECLARATION OF JAIME HERNANDEZ

I, JAIME HERNANDEZ, state and declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am a Deputy District Attorney employed by the County of Los Angeles.

2. If called upon to testify, I could competently testify to the matters stated herein of my own personal knowledge.

3. I am currently assigned to the District Attorney's office in the Rio Hondo Superior Court. I have been so assigned since approximately late 1999, and have been a filing deputy since that date. A filing Deputy District Attorney receives the police reports from police and thereafter determines the type of criminal charges to be filed in any particular case; and in some cases determines that no criminal charges be filed.

4. Since approximately the latter part of the year 1999, I was a full time filing deputy for the District Attorney's office in the Rio Hondo Superior Court. In addition, we had at Rio Hondo a job share/part time filing deputy for the District Attorney's office, Ms. Debra Scott. Ms. Scott worked one week on Mondays and Tuesdays and the following week Mondays, Tuesdays, and Wednesdays alternating the work schedule each week.

5. In the year 2000, with one full time filing Deputy, assisted by a part time filing Deputy, we were able to handle the case load at the Rio Hondo District Attorney's Office. This is because most of the heavy caseload of criminal filings occurs on Mondays, Tuesdays, and Wednesdays, following the weekend arrests which are sometimes numerous.

6. I never requested a second full time filing deputy for Rio Hondo from the Deputy District Attorney in charge at the El Monte office, Mr. Terry White, as I was satisfied with the help Ms. Scott provided to us on her job share/part time schedule.

7. I never requested a second full time filing deputy for Rio Hondo from Mr. Frank Sunstedt, the Deputy District Attorney in charge at the Pomona office. The Rio Hondo office came within the jurisdiction of the Pomona District Attorney's office and both are within the East District of the Los Angeles County.

8. In approximately September, 2000, Richard Ceballos was transferred to the Rio Hondo office as a full time filing deputy and Ms. Debra Scott was transferred to the Pomona office. In April, 2001, Richard Ceballos was transferred downtown to the Public Integrity Unit and Ms. Debra Scott was re-assigned part time to Rio Hondo.

I declare, under penalty of perjury that the foregoing is true and correct.

Executed on January 9, 2002, at El Monte, California.

/s/ Jamie Hernandez
JAMIE HERNANDEZ

EXHIBIT 6

CERTIFIED COPY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD CEBALLOS, Plaintiff, vs. GIL GARCETTI, Individually, and in his Official Capacity, FRANK SUNSTEDT, Individually, and in his Official Capacity, CAROL NAJERA, Individually, and in her Official Capacity, COUNTY OF LOS ANGELES, A Municipal Corporation, and DOES 1 through 10, Inclusive, Defendants.	No. CV 00-11106 (AHM) (AJWx)

DEPOSITION OF CAROL NAJERA

Thursday, September 20, 2001

* * *

[126] statement that Detective Walls gave to him, he had to memorialize, to do a witness statement report, and if he had his original documents, you know, his original notes, to put them on there.

Well, he thought about it a minute, and then he told me, "You know, I've got it. I already memorialized. It's on the memorandum." And I quite frankly forgot they were on there. I was looking at them, and I said "Okay." I said, "You know, Richard, I don't think we can turn these things over like this because we are going to get sued." And we

were kind of debating that issue, and a light bulb went on, and he's like, "Okay. What I will do is redact."

And I was like, "Okay. Well, before you even do that" – because I was still kind of leaning towards "Do witness statements." I figured "Wait a while. Let me talk to some people."

And Frank was not there at the time. And I thought I would wait until Frank got there and I'll ask him and see what he wants to do. And I know that in the course of that day – this happened in the afternoon – I talked to a few people, and the general feeling was that if you redact an internal – I was more concerned, obviously, than anyone else that we shouldn't be turning over internal D.A.

[127] documents, but the feeling that everybody left me was "That's fine. Just redact it and do it."

So I told Richard, and I think he asked a few people, too, and the general feeling among everybody was "Redact and do it," which was what, you know, after I voiced the concern, he was, like, "Yeah. Let's do it."

BY MR. BECERRA:

Q. Without telling me anything that your lawyer or lawyers have told you, probably in the – maybe in the grievance hearing, did you hear that Mr. Ceballos accused you of ordering him to actually rewrite the memos in such a way to leave out certain information and that the redaction was not acceptable to you?

Have you heard that allegation?

A. Yes.

Q. Is it your testimony that's not true? You never did that?

A. I never told him to rewrite this memo. I said "Write up witness statements."

And he kept saying "I am not going to rewrite my memo."

And I was, like, "You are not listening to me, Richard. I'm saying write all the witness statements with all the witnesses in it." And that's [128] when we were, like, "Okay." That's when he was, like, "I can redact it so we don't get sued by the police officers."

Q. So when you had mentioned earlier in your testimony, you said, "Look. If we rewrite the way that this is written" –

A. We didn't say "Rewrite this."

Q. I apologize. When you talked about – and you are right.

When you talked – when you testified about when you had mentioned turning over these internal documents that –

(At this time Mr. Guizar entered the conference room.)

MR. BECERRA: This is Mr. Guizar, He's also attorney of record. Anybody else?

BY MR. BECERRA:

Q. The concern that you had about being sued was with regards to the officers and not the defendants?

A. Correct. I thought that he had what could be characterized as slanderous statements in this thing, and I got the impression that he had some concerns, too, because he also was – like, when I said that, he said "Maybe I can redact it."

* * *

EXHIBIT 7

CERTIFIED COPY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD CEBALLOS, Plaintiff, vs. GIL GARCETTI, Individually, and in his Official Capacity, FRANK SUNSTEDT, Individually, and in his Official Capacity, CAROL NAJERA, Individually, and in her Official Capacity, COUNTY OF LOS ANGELES, A Municipal Corporation, and DOES 1 through 10, Inclusive, Defendants.	) No. CV 00-11106 (AHM) (AJWx)

DEPOSITION OF GILBERT GARCETTI

Tuesday, October 16, 2001

* * *

[30] essence, carry the flag for those he believes deserve a promotion. If he knows that everyone of his supervisors has, say, five people, he knows not everyone can get a promotion. So who are the one or two or three or four or five, six who deserve the promotion?

Q. From each particular office?

A. Right.

Q. Okay. Now, to your knowledge, are there notes or records that are kept, say, between the director and the district attorney in charge of an individual office as to how that list of eligibles is, say, prioritized or anything at all like that?

A. I'm not aware of any, anything written.

Q. All right. So although one could be eligible to be promoted, it sounds like, to me, they would still need their deputy in charge to prioritize them in order to have a shot at being promoted to a grade 4.

A. Yes and no. I mean, that's the most important thing, but that person may have just come, to Pasadena, for example, has only been there for three months; so maybe there's another supervisor who has greater input or a different director who supervised that person.

[31] So when they come together now, all the directors, assistant D.A.'s come together, that's when information is shared again. "Well, this person worked for me. He may be working for you now, but he was fabulous when he worked for us."

Q. Okay. Now, it sounds like, to me, that, by the time you get involved in the process of actually personally

ratifying who in 2000 is going to become a grade 4 from a grade 3, you actually have a – pretty much a reduced list. You've got a list –

A. I have a list of 40 recommendations. It's not 42, and I can knock off 1 or 2.

Q. Okay.

A. This is it.

Q. Okay. But it sounds like, to me, that you actually go through each of the people, and do you review something, or is this a conversation where you expect other people to have reviewed it and be able to answer questions or –

A. It's a conversation I have with the chief deputy. And I will go down, and many of the people I know. I've worked with them. Some of the people don't know, or maybe someone isn't on the list because I will then look at the master list and go down the master list too. "Well, why isn't this [32] person on this list?"

Q. Okay. So do you have a recollection whether in 2000 you did that, you looked at the master list and saw some folks that you thought maybe belonged on that list?

A. Well, there you asked two questions.

Q. I'm sorry.

A. One, yes, I did look at the list, I'm sure. Two, do I recall saying that there's some people who belong on that list? No, I don't recall.

Q. Okay. Now, would it be a fair statement – well, let me back up for a second first.

Are you aware of where the particular assignment is when that honed down list gets to you? Are you aware of where those grade 3 deputies are at the time you're looking at the list? Does that make sense?

A. Yeah, it makes sense. I may not be aware, but I'll ask the chief deputy.

Q. Okay. Now, just from being around for 29 years, I understand that you and Mr. Sunstedt have a good relationship.

A. Yes.

Q. Okay. And you've worked together – well, let me ask you. Let's include your time in the – [33] as the head of the district attorney's office. How many years actually have you been with the district attorney's office?

A. I was 32 years in the D.A.'s office.

Q. Okay. And out of that 32 years – you can give me a range. How much time do you think you actually spent working closely with Mr. Sunstedt?

A. "Closely"?

Q. I can use a better term. Where you had –

A. Well, I was his supervisor in the special investigations division, and that was – I don't know how many years that was. That's easy to document. My guess is three, four years.

Q. Okay.

A. And then we went our separate ways in terms of assignments, and when I became D.A., he worked with me very closely for four years.

Q. And he made the request – after you were re-elected a second time to be the head of the district attorney's office, he made a request that he wanted to go out to Pomona for what I imagine was personal reasons, and you OK'd that?

A. Yes.

Q. All right. Would it be a fair statement that recommendations from him in terms of

* * *

EXHIBIT 8

CERTIFIED COPY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD CEBALLOS, Plaintiff, vs. GIL GARCETTI, Individually, and in his Official Capacity, FRANK SUNDSTEDT, Individually, and in his Official Capacity, CAROL NAJERA, Individually, and in her Official Capacity, COUNTY OF LOS ANGELES, A Municipal Corporation, and DOES 1 through 10, Inclusive, Defendants.	No. CV 00-11106 (AHM) (AJWx)

DEPOSITION OF DINKO BOZANICH

Friday, October 5, 2001

* * *

[142] failing to comply with this Brady obligation dealing with the Cuskey matter?

A. He had already demonstrated time and again. By the time that Richard Ceballos's situation came up, the office was not going to fully honor the Brady obligation by notifying the defense attorneys of defendants who[se] cases were already closed because it had become routine, and his – all of his administrators, particularly those at will, that's the way they functioned. And I'll give you a perfect example.

Q. Hold on. I'll let you talk after, you know, maybe Mr. Becerra wants to redirect you. I think we're kind of at the end. I just want to wrap it up. I just want to know if you have any evidence or facts that may support, if you are asserting your assertion that Mr. Garcetti was aware that in the Cuskey matter – that Brady material was not – or Brady obligation was not being complied with by the district attorney's office.

A. Compelling circumstantial evidence, overwhelming circumstantial evidence in cases that I've personally been involved with and many that I'm aware of that Garcetti had previously not taken steps to assure that the defense bar was properly advised [143] pursuant to Brady. So when this case came along, it was just another one in a long series of cases where there had already been decisions made that we would not notify the defense bar.

So does that mean that every case in which we didn't do it was then brought to Garcetti's attention? No. But he

had already, clearly and unequivocally conducted himself, and made it clear to his subordinate and approached what his subordinates had done time and again. So when this case came along, it was just another one in which we were flagrantly and deliberately violating the Brady obligation.

Q. I don't want to put words in your mouth, so correct me if you don't think it is accurate.

You are assuming that Mr. Garcetti was aware of the D.A.'s office failure to comply with the Brady obligation in this Cuskey matter because of your past experiences with him on other cases?

MR. BECERRA: Well, I'm going to object to the characterization, and I think it misstates his testimony. He can answer it if he can answer it.

MS. LEE: He's an attorney. Let him respond.

THE WITNESS: Not just my past personal [144] experiences, but some of which I've already touched on today. But the way things are done in the D.A.'s office under Garcetti with regard to this obligation, including when I had raised issues with regarding to Brady and how they had been absolutely avoided, ignored, hidden, submerged, because I sent letters to him, copies to him. I never got an answer from anybody in the administration. Even when I persisted and kept asking questions, it was in stuff that was of a public nature. The least that could have been done is, "Bozanich, you don't know what you're talking about," or, "We've looked into it. You're wrong. You're right. You have to look at it further." Nothing. You ran into a black hole and that's just one example I can give you.

Another would be in the Rampart, if he wants to follow up on it. The perfect example I gave you a moment ago. There is no doubt in my mind that Garcetti absolutely knew that he violated his Brady obligation when this came to Rafael Perez. And if you want an answer, I'll give it to you.

BY MS. LEE:

Q. That's fine. I'm talking about Cuskey. Do you have any personal information?

A. That proceeded.

[145] Q. I mean, you weren't personally involved in Cuskey?

A. That's correct.

Q. It's fine to say you have an opinion based upon these prior experiences, and that's why you are assuming that Garcetti, you know, knew about it, but –

MR. BECERRA: Let me object –

MS. LEE: I just want to –

THE WITNESS: That's not an opinion. That's an inference I draw from all the available evidence, and then it's an unequivocal inference provable beyond a reasonable doubt with 12 in the box.

MR. BECERRA: Okay. In your opinion; correct?

THE WITNESS: No, not opinion. I have tried circumstantial evidence cases time and time again. Even when a defendant gets up there and says, "It ain't true," the trouble is that compelling circumstantial evidence is such. And that's what I'm trying to tell you, that in cases I

know Garcetti was personally aware of in which he did not take the action that is required. And when his subordinates also did not, the tempo was set by the district attorney. The district attorney knew what was going

* * *

[148] here knows that, and Garcetti does too.

Q. Let me ask it this way.

Do you think Mr. Garcetti participated in removing Mr. Ceballos from the calendar deputy position?

MR. BECERRA: I think that's been asked and answered, and I'm going to object as being vague and ambiguous as to "participated."

MS. LEE: Just answer "yes" or "no" if you understand it. If you don't, then we'll move on.

MR. BECERRA: It's still vague and ambiguous.

THE WITNESS: I will define it by Garcetti, as a master, being able to wipe his hands, and in effect, saying, "It wasn't my deal."

Was he involved in terms of previously setting the tone for how to do it and training Sundstedt? He's responsible.

BY MS. LEE:

Q. Is it your understanding that Mr. Garcetti participated in not – well, strike that.

Was it your understanding that Mr. Garcetti participated in removing the – that one murder case away from Mr. Ceballos?

A. I would have to give you the same answer.

* * *

EXHIBIT 9

DECLARATION OF JAMES E. BLANCARTE

I, James E. Blancarte, declare that I am an attorney duly licensed to practice law within all courts in the State of California. I am the immediate past President of the Mexican American Bar Association ("MABA").

I have personal knowledge of all facts stated in this declaration, and if called as a witness I could and would testify competently thereto.

In the fall of the year 2000 Deputy District Attorney, Richard Ceballos asked if he could address the MABA board regarding his allegation of retaliation by his supervisors from the District Attorney's Pomona Branch Office for having disclosed alleged misconduct of some Los Angeles County Sheriff Deputies.

In my capacity as MABA President, I called Los Angeles County District Attorney, Gil Garcetti and spoke to him about MABA's concerns regarding possible retaliation against Mr. Ceballos. I do not recall the exact words used by Mr. Garcetti in response. However, it is my best recollection that he said he would take note of MABA's concerns regarding Mr. Ceballos' situation. I then informed the MABA Board and Mr. Ceballos of the aforementioned communication. Neither I, nor the MABA Board took any further action with respect to Mr. Ceballos' allegations. I had no further communication of any kind with D.A. Garcetti regarding Mr. Ceballos' concerns or allegations.

I did not send any e-mails, memorandums, or written communications to Mr. Garcetti with respect to the above referenced communication I had with him regarding Richard Ceballos nor did I receive any such written communication or other documents from D.A. Garcetti.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 27th day of November 2001

/s/ James E. Blancarte
JAMES E. BLANCARTE

[Proof Of Service Omitted In Printing]

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD CEBALLOS, Plaintiff, vs GIL GARCETTI, individually, and in his Official Capacity, FRANK SUNSTEDT, Individually, and in his Official Capacity, CAROL NAJERA, Individually and in her Official Capacity, COUNTY OF LOS ANGELES, A Municipal Corporation, and DOES 1 THROUGH 10, Inclusive, Defendants.	Case No. CV 00-11106 AHM (AJWx) **ERRATA TO PLAINTIFF'S STATEMENT IN OPPOSITION TO DEFENDANTS' SEPARATE STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW** Date: January 28, 2002 Time: 10:00 a.m. Place: Courtroom 14

Plaintiff RICHARD CEBALLOS submits this Errata to Plaintiff's Statement of Uncontroverted Facts of Law in Opposition to the Motion for Summary Judgment herein filed by Defendants, GIL GARCETTI, FRANK SUNSTEDT and CAROL NAJERA. Specifically, Plaintiff left out his Response to Defendants' Conclusions of Law *at page 34* following the disputed statement of facts. Attached for the court's convenience is the corrected statement of facts as set forth herein, which includes the Response to Defendants' Conclusions of Law which was inadvertently omitted during the word processing of Plaintiff's Statement in Opposition to Defendants' Separate Statement of Uncontroverted Facts and Conclusions of Law:

Defendant's Uncontroverted Facts	**Plaintiffs' Facts and Supporting Evidence**
1. Plaintiff has been employed as a Deputy District Attorney with the Los Angeles County District Attorney's Office since 1989.	1. Undisputed, with the following caveat: Plaintiff had worked in the district attorney's office for 12 years prior to the incidents which precipitated this lawsuit. In calendar year 1996 plaintiff was promoted from Grade II to Grade III. From calendar years 1997 to 2000 plaintiff was a calendar deputy. Prior to his assignments as a filing deputy by defendants Sunstedt and Najera plaintiff never worked as a filing deputy as a grade III.

The only time plaintiff had ever worked as a Grade II was when he was doing special "vertical prosecutions", in sex crimes, which means the deputy D.A.'s handle the case from its filing to trial.

EVIDENTIARY SUPPORT

See, Exhibit (1) Ceballos Depo., at 13:12-17, 15:14-22, 17:15-19, 23:4-17, 27:6-15, 32:10-20

2. While Plaintiff was assigned as the calendar deputy at the Pomona branch, plaintiff was approached by a criminal defense attorney, Richard Escobedo, who represented one of the defendants in the case of *People v. Cuskey*, which had been assigned to another deputy District Attorney.	2. Undisputed
3. Mr. Escobedo told plaintiff that he believed that arresting Sheriff's deputies from the Industry Station may have lied in the search warrant affidavit and requested that plaintiff review the case.	3. Undisputed.

4. Plaintiff apparently reviewed the affidavit and other documentary evidence, and concluded that the property described in the affidavit had been mischaracterized.

4. **DISPUTED:**

Plaintiff reviewed the affidavit and other documentary evidence, he then determined he should personally inspect the scene which formed the basis for the Sheriff's warrant. After doing these aforementioned things he determined that the sheriff's had either lied or grossly misrepresented the truth. Thereafter, pursuant to his duties as a prosecutor, he wrote a memo expressing his concerns about the veracity of the officers in this case. He then informed his supervisors he intended to comply with his duties under *Brady v. Maryland*, (1963) 373 U.S. 83, 83 S.Ct. 1194, 102 L.Ed.2d 215., which required him to turn his memo over to defense counsel.

Defendant NAJERA in violation of *Brady* ordered Plaintiff to not produce this memo to defense counsel, but rather, ordered him to rewrite a different memo, and also threatened plaintiff with employment retaliation if he did not do as told.

Defendant NAJERA admits that she did not want Plaintiff's original memo produced. However, she states she asked Plaintiff to write out a witness statement instead.

EVIDENTIARY SUPPORT

See, Exhibit (1) Ceballos Depo at 44:13-16, 69:7, 74:17, 120:21-122:4, 124:2-25, 125:1-25, Exhibit (6) depo of Carol Najera, at 126:1-15, 127:9-25, 128:1-25

5. After further investigation, plaintiff discussed the matter with Head Deputy District Attorney Frank Sunstedt and plaintiff's immediate supervisor Carol Najera who purportedly agreed that there was a problem.

5. Undisputed

6. On March 2, 2000, plaintiff prepared a memorandum/ disposition report setting forth a summary of his investigation and his conclusion that the affidavit was falsified and misleading and his recommendation that the *Cuskey* case dismissed and sent the memorandum/ disposition report to defendant Sunstedt.

6. Undisputed

7. Upon reviewing the memorandum, defendant Sunstedt had concerns about the *Cuskey* case but recommended that plaintiff revise the memorandum so that it did not include conclusions and blatant statements accusing the Sheriff deputies of committing felonious perjuries that had not been proven.

7. **DISPUTED:**

Defendant SUNSTEDT, as was defendant NAJERA were concerned about the Sheriff's Department's reaction to the report and therefore instructed Plaintiff to edit the language of the report to not make it so "accusatory".

Defendant NAJERA, did not want Plaintiff's original memo produced to the defense attorney. In fact she agrees she ordered Plaintiff to write out a witness statement instead of producing Plaintiff's actual memorandum. She also threatened plaintiff with employment retaliation if he did not do as he was told.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 90:21-24, 124:2-25, 125:1-25, Exhibit (6) depo of Carol Najera, at 88:11-17, 126:1-15, 127:9-25,

8. After the memorandum was modified, defendant Sunstedt contacted the appropriate Captain at the

8. **DISPUTED:**

This meeting was actually held at the direction

Sheriff's Department Industry Station and advised him that he thought there was problem with the *Cuskey* case and requested a meeting to discuss it.

of Defendant SUNSTEDT in response to a demand by the Sheriff's Department.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 56:1.

9. On March 9, 2000, a meeting was held at Mr. Sunstedt's office attended by a Sheriff's captain, lieutenant, the deputy sheriff who prepared the search warrant affidavit, the plaintiff, Mr. Gallon, and defendants Sunstedt and Najera.

9. Undisputed, except with the following necessary addendum;

There were other Sheriff deputies present, including a Captain.

EVIDENTIARY SUPPORT

See Exhibit (5) depo of Frank Sunstedt, at 105:10-17

10. Upon listening to what the deputy sheriff who prepared the search warrant affidavit had to say at the meeting, Mr. Sunstedt was not sure that a dismissal without an airing of the evidence was the appropriate was to handle the *Cuskey* case, but rather, he believed that the best course of action was to proceed with the Motion to Traverse the warrant which had already been filed by the defense so that a neutral judicial officer could hear the testimonies

10. **DISPUTED.**

Defendant SUNSTEDT, only considered the Sheriff's Department's reaction, primarily their fears they could be sued by the criminal defendants if the matter did not proceed to trial.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 90:21-24, 124:2-25, 125:1-25

and assess the evidence and make the call regarding the credibility of the officers.

11. Plaintiff did not continue to try to have the *Cuskey* case dismissed after the March 9, 2000 meeting.

11. **DISPUTED**

Plaintiff repeatedly opined that the Cuskey case should be dismissed and requested it. He also later learned that the same deputies in the Cuskey case were involved a subsequent case where similar allegations were being made. He tried to once again comply with *Brady v. Maryland*, (1963) 373 U.S. 83, 83 S.Ct. 1194, 102 L.Ed.2d 215., by trying to disclose what he knew in the Cuskey case, but he was again threatened, this time by Deputy district attorney George Knoke.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 249:1-25, 250:1-25

12. Plaintiff was subpoenaed by the defense in the *Cuskey* case to testify [a]t the Motion to Traverse hearing which was to be heard by Judge David Milton.

12. Undisputed

13. Plaintiff was the calendar deputy for Judge Milton at that time and had been so for about one year.

13. Undisputed

14. Plaintiff testified at the Motion to Traverse hearing, and the Motion was denied.

14. Undisputed

15. One of the defendants was convicted after trial and the other two defendants entered guilty pleas.

15. Undisputed except with the following necessary addendum:

As a result of the allegations raised by Plaintiff, one of the defendants bargained to a lesser charge.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 134:13-18

16. Plaintiff contends that his opinions regarding the handling of the *Cuskey* matter led to various acts of retaliation by defendants Sunstedt and Najera

16. DISPUTED

The Plaintiff was subjected to retaliation solely for voicing his opinions, and for a number of other factors; including; speaking out against Sheriff misconduct, writing the memorandum setting forth the misconduct, for refusing to withdraw his position on the issue, (which included his relentless will to do right, by taking steps to dismiss the case) and for, objecting to defendants, Sunstedt and

Najera allowing the Sheriff deputies at the March 9, 2000 meeting to degrade, castigate, and embarrass Plaintiff for having reported.

Additionally, after the March 9, 2000 meeting the defendants, Sunstedt and Najera were both avoiding, shunning and unjustifiably criticizing plaintiff. This retaliation subjected plaintiff to a hostile work environment.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 90:21-24, 97:18-24, 98:18-23, 124:2-25, 125:1-25, Exhibit (6) depo of Carol Najera, at 126:1-15, 127:9-25, 128:1-25

17. Plaintiff alleges the first instance of retaliation as a result of his statements and opinions relating to the *Cuskey* matter purportedly occurred right after the meeting with the Sheriff's officials when defendants Sunstedt allegedly told plaintiff that he would no longer be calendar deputy at the Pomona branch and

17. DISPUTED

Although plaintiff perceived this as the first instance of retaliation for his statements and opinions relating to the *Cuskey* matter, there were other prior acts of retaliation for Plaintiff refusing to condone the Sheriff misconduct. Specifically, after Plaintiff wrote the memorandum

would be re-assigned as a trial deputy.

defendants, Sunstedt and Najera allowed the Sheriff deputies at the March 9, 2000 meeting to degrade, castigate, and embarrass Plaintiff for reporting for the misconduct.

Additionally, after the March 9, 2000 meeting the defendants, Sunstedt and Najera were both avoiding, shunning and unjustifiably criticizing plaintiff. This retaliation subjected plaintiff to a hostile work environment.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 90:21-24, 124:2-25, 125:1-25, Exhibit (6) depo of Carol Najera, at 126:1-15, 127:9-25, 128:1-25

18. Plaintiff alleges the second instance of retaliation as a result of his statements and opinions relating to the *Cuskey* matter allegedly occurred when defendants Najera informed him that one of his murder cases would be reassigned to a lower deputy District Attorney.

18. Undisputed except with that the following necessary addendum:

No other Grade III level Deputy District attorney EVER had a murder case pulled from him while plaintiff was working in the Pomona Branch court.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 143:-19

19. Plaintiff also contends that he was not assigned any new murder cases and was denied a Grade IV promotion as a result of his opinions relating to the *Cuskey* case.

19. DISPUTED

Plaintiff was denied a Grade IV promotion because of his opinions related to the *Cuskey* case. Defendants Sunstedt and Najera carried out administrative actions specifically for the purpose of directly affecting Plaintiff's ability to be promoted.

These actions included: the removal of plaintiff as a calendar deputy, not allowing plaintiff to handle any further murder cases, and their attempts to transfer the highly experienced Plaintiff to the degrading job of filing misdemeanors.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 27:6-25, 27:1-9, 32:8-20, 33:17-33, 37:2-4, 38:5-19, 40:14-22, 141:12-25, 142:1-17, 143:1-12, 146:11-25, 147:1-25, Exhibit (7) depo of Gilbert Garcetti, at 30:9-25, 31:1-25, 32:1-25, 33;1-25

20. In April 2000, the Pomona branch eliminated two calendar courts. Prior to then, it had four calendar courts, two of which were staffed by Grade IV calendar deputies, and two of which were staffed by Grade Level III deputies.

20. **DISPUTED**

Prior to April 2000 The Pomona branch court had four calendar courts. In April 2000 two of the calendar court[s] were not eliminated, but rather, the four calendar courts were consolidated into two calendar courts, consequently two calendar deputies were assigned for the two consolidated calendar courts.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 140:7-25, 141:1-11

21. Mr. Sunstedt decided that the two remaining calendar courts should have two calendar deputies and plaintiff was thereafter placed as a co-calendar deputy with a Grade IV deputy, Michael Grossbard.

21. **DISPUTED**

Prior to April 2000 The Pomona branch court had four calendar courts. In April 2000 two of the calendar court[s] were not eliminated, but rather, the four calendar courts were consolidated into two calendar courts, consequently two calendar deputies were assigned for the two consolidated calendar courts. The fact remained that two calendar deputies were required for the two consolidated courts. Plaintiff

was one of those calendar deputies until May 2000, when he was stripped of that position and transferred to the status of trial attorney.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 140:7-25, 141:1-11

22. Because filing deputy positions were generally difficult to staff, Mr. Sunstedt attempted to rotate deputies through these positions for six-month periods. One of the Grade III deputies had been filling one filing deputy position and it was understood even before the *Cuskey* matter that plaintiff was the next in line to file for a six-month period.

22. **DISPUTED**

There is no such thing as a rotation policy regarding filing deputies, but rather, plaintiff was the only calendar deputy from the Pomona branch court that was ever sent out to a different area court to work as a filing deputy during the 2-3 year time period under Sunstedt's leadership reign. In fact, of the current filing deputies working in the area courts that serve the Pomona branch court none have ever worked as calendar deputies.

This administrative action is another example of retaliatory actions defendants took against plaintiff in order to affect his chances of being promoted.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 27:6-25, 27:1-9, 32:8-20, 33:17-33, 37:2-4, 38:5-19, 40:14-22, 141:12-25, 142:1-17, 143:1-12, 146:11-25, 147:1-25, Exhibit (7) depo of Gilbert Garcetti, at 30:9-25, 31:1-25, 32:1-25, 33:1-25

23. However, when it came time for plaintiff to fill that filing deputy positions, Mr. Sunstedt became aware of a trial deputy whose pregnancy prevented her continuing to do court duty. As such, she was assigned the filing position, giving plaintiff a reprieve until mid-August, 2000, when the misdemeanor filings in Pomona were getting behind because there was only a part-time deputy handling them.

23. **DISPUTED**

Defendants Sunstedt and Najera took this administrative action, along with the others mentioned above, for the purpose of directly affecting Plaintiff's ability to be promoted. In fact, deputy district attorneys' Terry L. White, and Jaime Hernandez, (assigned to Rio Hondo when plaintiff was transferred) did not request nor they need a full time filing deputy. Therefore, there was no need for plaintiff to be assigned to work full time as a filing deputy in Rio Hondo.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 27:6-25, 27:1-9, 32:8-20, 33:17-33, 37:2-4, 38:5-19, 40:14-22,

141:12-25, 142:1-17, 143:1-12, 146:11-25, 147:1-25, Exhibit (7) depo of Gilbert Garcetti, at 30:9-25, 31:1-25, 32:1-25, 33:1-25

24. The fact plaintiff got transferred to be a filing deputy is because he was treated identical with every other Grade III that Mr. Sunstedt had on staff.

24. **DISPUTED**

Plaintiff was treated differently f[ro]m other deputy D.A.'s because of his actions in the *Cuskey* case, as there was no need for plaintiff to be assigned to work full time as a filing deputy in Rio Hondo. Also, the transfer was done for the purpose of directly affecting Plaintiff's ability to be promoted.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 27:6-25, 27:1-9, 32:8-20, 33:17-33, 37:2-4, 38:5-19, 40:14-22, 141:12-25, 142:1-17, 143:1-12, 146:11-25, 147:1-25, See Exhibit (7) depo of Gilbert Garcetti, at 30:9-25, 31:1-25, 32:1-25, 33:1-25 Exhibit (2) Declaration of Terry L. White, Exhibit (3) Declaration of Jaime Hernandez

25. Because plaintiff lived in Pomona, Ms. Najera wanted to give plaintiff an option to remain in the Pomona branch and fill the misdemeanor filing vacancy. As such, on August 28, 2000, Ms. Najera gave plaintiff a choice of filing misdemeanors in Pomona, or being transferred to El Monte as a felony-filing deputy

25. **DISPUTED**

Najera created a false pretext to justify transferring plaintiff to the Rio Hondo court as filing deputy by falsely stating that the Rio Hondo Branch court needed a two full time filing deputies. In fact, deputy district attorneys' Terry L. White, and Jaime Hernandez, (assigned to Rio Hondo when plaintiff was transferred) did not request not need or request a full time filing deputy.

This transfer of plaintiff's employment duties status was intentional administrative action that placed stigmas on plaintiff's employment status in order to insure he would not be promoted to a Grade IV position.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 27:6-25, 27:1-9, 32:8-20, 33:17-33, 37:2-4, 38:5-19, 40:14-22, 141:12-25, 142:1-17, 143:1-12, 146:11-15, 147:1-25, (7) depo of Gilbert Garcetti, at 30:9-25, 31:1-25, 32:1-25,

33:1-25, Exhibit (2) Declaration of Terry L. White, Exhibit (3) Declaration of Jaime Hernandez

26. However, plaintiff refused to choose because he believed that filing misdemeanors was not suitable for one with his experience and that being transferred to El Monte would require a longer commute.

26. **DISPUTED**

Plaintiff refused to choose between the two choices given because both choices were degrading retaliatory acts. In fact, deputy district attorneys' Terry L. White, and Jaime Hernandez, (assigned to Rio Hondo when plaintiff was transferred) did not request not need or request a full time filing deputy.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 27:6-25, 27:1-9, 32:8-20, 33:17-33, 37:2-4, 38:5-19, 40:14-22, 141:12-25, 142:1-17, 143:1-12, 146:11-25, 147:1-25, Exhibit (2) Declaration of Terry L. White, Exhibit (3) Declaration of Jaime Hernandez

27. Since plaintiff did not choose, Ms. Najera transferred him to El Monte effective September 5, 2000

27. DISPUTED

Najera created a false pretext to justify transferring plaintiff to the Rio Hondo court as a filing

deputy by falsely stating that the Rio Hondo Branch court needed a two full time filing deputies. In fact, deputy district attorneys' Terry L. White, and Jaime Hernandez (assigned to Rio Hondo when plaintiff was transferred) did not request not need or request a full time filing deputy.

This transfer of plaintiff's status as a Deputy district attorney was a calculated administrative change carried out with the intent to chastise plaintiff, and place stigmas on plaintiff's employment status in order to insure he would not be promoted to a Grade IV position.

Plaintiff was the only calendar deputy from the Pomona branch court that was ever sent out to a different area court to work as a filing deputy during the 2-3 year time period under Sunstedt's leadership reign. In fact, of the current filing deputies working in the area courts that serve the Pomona branch court none have ever worked as calendar deputies.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 27:6-25, 27:1-9, 32:8-20, 33:17-33, 37:2-4, 38:5-19, 40:14-22, 43:12-20, 44:3-25, 45:5-1[illegible], 136:14-23, 141:12-25, 142:1-17, 143:1-12, 146:11-25, 147:1-25, 150:13-25, Exhibit (2) Declaration of Terry L. White, Exhibit (3) Declaration of Jaime Hernandez

28. As he was in charge of overseeing an entire branch office, Mr. Sunstedt fe[l]t it was his duty to ensure that his deputies were permitted to handle a homicide case at one point under his supervisor. Two Grade II deputies were to be transferred to the Juvenile Division from Pomona shortly and Mr. Sunstedt wanted them to experience the trial of a murder case before their departure to Juvenile.

28. DISPUTED:

Taking away the murder case from plaintiff was a retaliation for his actions in the *Cuskey* case. The employment action taken was a pretext specifically calculated and carried out to degrade, and chastise plaintiff, and, to place stigmas on plaintiff's employment in order to insure he would not be promoted to a Grade IV position.

This retaliatory employment action, as well as the others was ratified by Defendant, Gil Garcetti, as Garcetti was aware that plaintiff, a highly experienced deputy D.A. was

handling Grade II type work.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 27:6-25, 27:1-9, 32:8-20, 33:17-33, 37:2-4, 38:5-19, 40:14-22, 43:12-20, 44:3-25, 45:5-18, 136:15-23, 141:12-25, 142:1-17, 143:1-12, 146:11-25, 147:1-25, 150:13-25, Exhibit (8) depo of Dinko Bozanich, at 142:12-25, 143:1-25, 144:1-25, 145:10-25, 48:10-25.

29. He instructed Ms. Najera to find a suitable murder case for each of the Grade II deputies to try before their departure to Juvenile. Ms Najera went to all the calendar deputies and gathered a brief synopsis of all the pending murder cases that might be suitable for reassignment and brought them to the attention of Mr. Sunstedt.

29. DISPUTED

No other deputy district attorney Grade III from the Pomona branch had a murder case pulled from him as stated by defendants.

The employment action taken was a pretext specifically calculated and carried out to degrade, and chastise plaintiff, and, to place stigmas on plaintiff's employment in order to insure he would not be promoted to a Grade IV position

This retaliatory employment action along with

30. One of the murder cases selected by Mr. Sunstedt as being appropriate to be re-assigned to Grade II deputy Steve Gallon was plaintiff and the other Grade II received a murder case from another Grade III deputy.

the others was fully ratified by Defendant, Gil Garcetti.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 27:6-25, 27:1-9, 32:8-20, 33:17-33, 37:2-4, 38:5-19, 40:14-22, 43:12-20, 44:3-25, 45:5-18, 136:15-23, 141:12-25, 142:1-17, 143:1-12, 146:11-25, 147:1-25, 150:13-25, Exhibit (8) depo of Dinko Bozanich at 142:12-25, 143:1-25, 144:1-25, 145:10-25, 148:10-25.

30. DISPUTED

No other deputy district attorney Grade III from the Pomona branch had a murder case pulled from him as stated by defendants.

This retaliatory employment action along with the others was fully ratified by Defendant, Gil Garcetti.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 27:6-25, 27:1-9, 32:8-20, 33:17-33, 37:2-4, 38:5-19, 40:14-22, 43:12-20, 44:3-25, 45:5-18, 136:15-23, 141:12-25,

142:1-17, 143:1-12, 146:11-25, 147:1-25, 150:13-25, Exhibit (8) depo of Dinko Bozanich, at 142:12-25, 143:1-25, 144:1-25, 144:10-25, 148:10-25

31. Mr. Sunstedt chose the *Perrin* case, previously assigned to plaintiff, because he believed the nature of the case was suitable to provide a promising Grade II deputy with experience of trying a homicide case.

31. DISPUTED

No other deputy district attorney Grade III from the Pomona branch had a murder case pulled from him as was done to plaintiff.

The employment action taken was a pretext specifically calculated and carried out to degrade, and chastise plaintiff, and, to place stigmas on plaintiff's employment in order to insure he would not be promoted to a Grade IV position.

This retaliatory employment action along with the others was fully ratified by Defendant, Gil Garcetti.

EVIDENTIARY SUPPORT

See Exhibit (4) depo of Richard Ceballos, at 27:6-25, 27:1-9, 32:8-20, 33:17-33, 37:2-4, 38:5-19, 40:14-22, 43:12-20, 44:3-25, 45:5-18, 136:15-23, 141:12-25, 142:1-17, 143:1-12, 146:11-25, 147:1-25, 150:13-25

32. The number of new murder cases that would be assigned to trial deputies were dependent on the murder rate in Pomona.	32. Undisputed
33. Plaintiff was not assigned any new murder cases between the time of the hearing on the Motion to Traverse on the *Cuskey* case on March 20, 2000, and his re-assignment to El Monte to September 5, 2000 because there were limited murder informations filed in Pomona.	33. DISPUTED Sunstedt's transfer of Plaintiff to El Monte was a retaliatory employment action. Specifically the decision to not assign any further murder cases to plaintiff was done to castigate and chastise plaintiff for his reporting of sheriff misconduct, and to place stigmas on plaintiff's employment resume in order to prevent his being promoted to a Grade IV position. This retaliatory employment action along with the others was fully ratified by Defendant, Gil Garcetti. **EVIDENTIARY SUPPORT** See Exhibit (4) depo of Richard Ceballos, at 27:6-25, 27:1-9, 32:8-20, 33:17-33, 37:2-4, 38:5-19, 40:14-22, 43:12-20, 44:3-25, 45:5-18, 136:15-23, 141:12-25,

	142:1-17, 143:1-12, 146:11-25, 147:1-25, 150:13-25, Exhibit (8) depo of Dinko Bozanich at 142:12-25, 143:1-25, 144:1-25, 145:10-25, 148:10-25
34. Plaintiff along with about 150 others, was a candidate for limited Grade IV positions in the District Attorney's Office. Only 44 Grade IIIs were actually promoted.	34. Undisputed
35. Plaintiff was one of ten Grade III's from the Pomona branch that Mr. Sunstedt recommended to be promoted based upon his scores from the written exam and appraisal of promotability analysis	35. DISPUTED Only before the *Cuskey* matter did Ceballos have the opportunity to be promoted based upon his outstanding evaluations. Following *Cuskey* he would be denied the essential recommendation from defendant Sunstedt to obtain his Grade IV promotion. **EVIDENTIARY SUPPORT** *See*, Exhibit (8) depo of Dinko Bozanich, at 142:12-25, 143:1-25, 144:1-25, 145:10-25, 148:10-25, Exhibit (7) depo of Gilbert Garcetti, at 30:9-25, 31:1-25, 32:1-25, 33:1-25, Exhibit (4) depo of Richard Ceballos at 161:2-17; 162:24-25;

163:1-21; Exhibit (5) depo of Frank Sunstedt at 50:18-25; 51:1-2; 52:12-17

36. Of the candidates, Mr. Sunstedt rated eight outstanding, including plaintiff. Four of these eight candidates were actually promoted.

36. Undisputed, but with the additional fact that plaintiff was not recommended by defendant Sunstedt in the ultimate group of four that were the only candidates that had any possibility of being promoted to Grade IV.

EVIDENTIARY SUPPORT

See, Exhibit (8) depo of Dinko Bozanich, at 142:12-25, 143:1-25, 144:1-25, 145:10-25, 148:10-25, Exhibit (7) depo of Gilbert Garcetti, at 30:9-24, 31:1-25, 32:1-25, 33:1-25, Exhibit (4) depo of Richard Ceballos at 161:2-17; 162:24-25; 163:1-21, Exhibit (5) depo of Frank Sunstedt at 50:18-25; 51:1-2; 52:12-17

37. The final decision on which Grade III deputies would be promoted to Grade IV rested with then District Attorney Garcetti, who would receive recommendations from his Chief Deputy after the Chief Deputy has meetings and discussions with the

37. DISPUTED

Sun[d]stedt and Garcetti were personal friends and worked together. Garcetti placed a lot of weight on what Sundstedt would tell him regarding promotions. Ultimately without the recommendation of

Directors of all the branch offices and the three Assistant District Attorneys.

defendant Sun[d]stedt plaintiff would not have any opportunity to be promoted.

EVIDENTIARY SUPPORT

See, Exhibit (8) depo of Dinko Bozanich at 142:12-25, 143:1-25, 144:1-25, 145:10-25, 148:10-25. Exhibit (7) depo of Gilbert Garcetti, at 30:9-25, 31:1-25, 32:1-25, 33:1-25, Exhibit (4) depo of Richard Ceballos at 161:2-17; 162:24-25; 163:1-21, Exhibit (5) depo of Frank Sunstedt at 50:18-25; 51:1-2; 52:12-17

38. Other than scoring the appraisal of promotability, the only other involvement that Mr. Sunstedt had in the promotion process was to opine to the Director of the Branch and Area Operation of his top three or four candidates whom he believed should get the Grade IV position.

38. DISPUTED

Sun[d]stedt and Garcetti were personal friends and worked together. Garcetti placed a lot of weight on what Sunstedt would tell him.

Plaintiff knew that based on the relationship of Garcetti and Sunstedt that it was futile to utilize the grievance procedure for the retaliation that had occurred. Plaintiff went to the Mexican American Bar Association, and was assured by the President James Blancarte, that as a personal friend of Garcetti,

that he had spoken to him and that Garcetti would give the matter his personal attention and that there was no need to talk to the MABA Board of Trustees.

Within days of Mr. Blancarte's communication with Garcetti the grievance officer rejected all of Mr. Ceballos claims of retaliation.

As a result of the defendants' actions set forth in the grievance, plaintiff suffered severe emotional distress, lost his desire to continue his career as a prosecutor which required him to use medicine in order to sleep.

EVIDENTIARY SUPPORT

See, Exhibit (8) depo of Dinko Bozanich at 142:12-25, 143:1-25, 144:1-25, 145:10-25, 148:10-25, and, Exhibit (4) depo of Richard Ceballos, at 177:16-25, 178:2-23, 180:1-16, 186:12-23, 264:1-25, 262:2-25, 263:1-25, 265:1-23, 266:2-23, 270:2-8, 273:8-15, 275:15-23, 276:3-18

39. While Mr. Garcetti was the final decision-maker on who would be promoted to the limited Grade IV positions, there is simply no evidence that he was even aware of the *Cuskey* matter or plaintiff's involvement in the same at the time he agreed with the recommendations of his Chief Deputy on the Grade IV promotions or that his approval with the recommendations had anything to do with plaintiff's purported speech.

39. DISPUTED

Due to the explosiveness of the police misconduct issue, and the negative stigma it could place on the district attorney's office, as evidenced by the Rampart Scandal, it is highly unlikely that Sunstedt or the Sheriff's Department would not inform Gil Garcetti about the allegations made by plaintiff. There is strong circumstantial evidence in support of this fact.

Plaintiff could not be considered for Grade IV promotion unless defendant Sunstedt advised the director handling the file recommendations that he considered Ceballos one of his top three or four deputies who had scored outstanding in band 1. Defendant Sunstedt did no[t] make such a recommendation, and thus plaintiff was not promoted to Grade IV.

EVIDENTIARY SUPPORT

See, Exhibit (8) depo of Dinko Bozanich, at 142:12-25, 143:1-25, 144:1-25, 145:10-25, 148:10-25, Exhibit (7) depo of Gilbert

Garcetti, at 30:9-25, 31:1-25, 32:1-25, 33:1-25, Exhibit (4) depo of Richard Ceballos at 161:2-17; 162:24-25; 163:1-21, Exhibit (5) depo of Frank Sunstedt at 50:18-25; 51:1-2; 52:12-17

PLAINTIFF'S RESPONSE TO DEFENDANTS' CONCLUSIONS OF LAW

Plaintiff does not dispute Defendants' Conclusions of Law Nos. 1, 2, 3, 4, 5, 6, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25.

Plaintiff provides these additional Conclusions of Law:

1. Speech involves matter of public concern when it can fairly be considered to relate to "any matter of political, social or other concern to the community." *Connick v. Myers*, 461 U.S. at 146, 103 S.Ct. at 1690; *Johnson v. Multnomah County*, 48 F.3d at 422. Whether and employee's speech addresses a matter of public concern must be determined by the *content*, *form* and *context*, of a given statement, as revealed by the whole record. *Connick v. Myers*, 461 U.S. 147-148, 103 S.Ct. at 1690.

2. For speech to be of a public concern, it need *not be communicated publicly*. *Givhan v. Western Line Consolidated School Dist.*, 439 U.S. 410, 415, 99 S.Ct. 693, 696-97 (1979) (Freedom of speech not "lost to the public employee who arranges to communicate privately with his employer rather than to spread his views before the public").

3. In making its determination, the Court must arrive at *balance* between the interests of the public employees as a citizen, in commentating upon matters of public concern and the interests of the State, as an employer, in promoting the efficiency of the public services it performs through employees. *Pickering v. Board of Education of Township High School District*, 391 U.S. 563, 568, 88 S.Ct. at 1734-35 (1968).

4. The State's burden in justifying a particular adverse employment action varies depending upon the nature of the employee's expression *Connick v. Myers*, 461 U.S. at 150, 103 S.Ct. at 1691.

5. A stronger showing may be necessary if the employee's speech more substantially involved matters of public concern. *Id.* at 152, 103 S.Ct. at 1692-93.

6. Moreover, a public employer has *no legitimate interest* in covering up *mismanagement or corruption*. *Johnson v. Moltnomah County*, 48 F.3d 420, 427 (9th Cir.) *cert. denied*, 515 U.S. 1161, 115 S.Ct. 2616 (1995).

7. *Voigt v. Savell*, 70 F.3d 1552, 1562 (9th Cir. 1995) cert. denied, 517 U.S. 1209, 116 S.Ct. 1826 (1996) (allegations of criminal wrongdoing and abuse of power involve matters of inherent public concern); *Hyland v. Wonder*, 972 F.2d 1129, 1137 (9th Cir. 1992) (memorandum exposing, *inter alia*, abuses, potential civil rights violations, and incompetence of public officials addressed matters of public concern).

8. *Hufford v. McEnaney*, 249 F.3d 1142 (9th Cir. 2001) that in a goodfaith whistleblowing context, the breath of one's audience is irrelevant. *Id.* at 249 F.3d at 1151.

9. District attorneys have a First Amendment Right to keep the public informed, respond to media questions, and ask other law enforcement agencies to conduct their own investigation. *Bradbury v. Superior Court*, (1996) 49 Cal.App.4th 1108, 1113-1115; 57 Cal. Rptr. 207.

10. The more tightly the First Amendment embraces the speech, the more vigorous a showing of disruption must be made. *Hyland v. Wonder*, 972 F.2d at 1139.

11. Where government officials adopt and expressly approve of the acts of others who cause the constitutional violation, there is liability. *Hammond v. County of Madera*, 859 F.2d 797, 802-03 (9th Cir. 1988), disapproved on other grounds in *L.W. v. Grubbs*, 92 F.3d 894 (9th Cir. 1988).

DATED: January 14, 2002

MORENO, BECERRA,
GUERRERO & CASILLAS
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BY: /s/ Danilo J. Becerra
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DATED: January 14, 2002

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD CEBALLOS, Plaintiff, vs. GIL GARCETTI, individually, and in his Official Capacity, FRANK SUNDSTEDT, Individually, and in his Official Capacity, CAROL NAJERA, Individually and in her Official Capacity, COUNTY OF LOS ANGELES, A Municipal Corporation, and DOES 1 THROUGH 10, Inclusive, Defendants.	Case No. CV 00-11106 AHM (AJWx) Honorable A. Howard Matz **DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF INDIVIDUAL ISSUES; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF JIN S. CHOI; EXHIBITS** [Declarations of Frank Sundstedt, Don Clem, Nancy Dukellis and Amy (Kuhnert) Glaudini; Defendants' Objections to Plaintiff's Evidence filed concurrently herewith] Date: January 28, 2002 Time: 10:00 a.m. Courtroom: 14

TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

Defendants GIL GARCETTI, FRANK SUNDSTEDT and CAROL NAJERA hereby submit the following Memorandum of Points and Authorities, Declaration of Jin S. Choi, and Exhibits in response to plaintiff Richard Ceballos' Opposition to defendants' Motion for Summary Judgment, or Alternatively Summary Adjudication.

DATED: January 22, 2002

FRANSCELL, STRICKLAND, ROBERTS & LAWRENCE

By /s/ Jin S. Choi for
Cindy S. Lee
Attorneys for Defendants
GIL GARCETTI,
FRANK SUNDSTEDT,
and CAROL NAJERA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiff has made no showing as to why defendants should be denied qualified immunity. Indeed, cases analogous to the facts of this present case demonstrate that the speech in question here simply does not constitute a matter of public concern and is thus not protected by the First Amendment. Plaintiff certainly has not and cannot demonstrate that the law was clearly established that the speech in question constituted protected speech. Even if the speech is deemed to have been protected, plaintiff must still demonstrate that, under clearly established law, that the required balancing of factors clearly weighs in favor of him and against defendants in order to avoid a finding of qualified immunity. Plaintiff has not and cannot make this demonstration.

Moreover, rather than present any relevant or otherwise admissible evidence to refute defendants' legitimate and objectively reasonable basis for the employment actions at issue, plaintiff simply offers purely speculative and conclusory assertions that defendants' actions were motivated by retaliation. Reliance on such self-serving, unsubstantiated "evidence" is sufficient to overcome summary judgment.

Furthermore, while plaintiff seeks to hold defendants Najera, Sundstedt and Garcetti each personally liable, plaintiff fails to specify just how each defendant's conduct proximately caused or was otherwise responsible for the

purported adverse employment actions. For instance, even though the evidence is uncontroverted that defendant Sundstedt was the sole decision-maker with regard to plaintiff's transfer from calendar deputy to filing deputy and the reassignment of a murder case as well as non-assignment of new murder cases, plaintiff continues to attempt to hold defendants Najera and Garcetti personally liable for those employment actions. Finally, even though neither defendants Najera nor Sundstedt advised defendant Garcetti about plaintiff's opinions in the *Cuskey* matter and were simply not involved in the final decision-making process relating to the Grade Level IV promotions, plaintiff insists that they somehow caused him to be denied that promotion. Indeed, there is simply no evidence whatsoever that defendant Garcetti was even aware of plaintiff's opinions or involvement in the *Cuskey* matter before he approved the final recommendations of his Chief Deputy for the Grade Level IV promotions.

II. DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY BECAUSE THE LAW DID NOT CLEARLY ESTABLISH THAT THE SPEECH IN QUESTION WAS PROTECTED BY THE FIRST AMENDMENT.

To prevail on a First Amendment retaliation claim, a public employee must first establish that the speech in question was constitutionally protected. *Brewster v. Board of Education*, 149 F.3d 971, 978 (9th Cir. 1998). For the plaintiff's conduct to be constitutionally protected, 1) the speech must involve a matter of public concern; and 2) the plaintiff's interest in expressing himself must outweigh the government's interest in promoting workplace efficiency and avoiding workplace disruption. *Id.* Plaintiff

does not dispute the foregoing legal prerequisites. (See plaintiff's Response to Defendants' Conclusion of Law Nos. 5, 8 and 9.)

Based on plaintiff's Opposition, the only "speech" which led to the alleged acts of retaliation was his reporting of the sheriff's deputies' misconduct to defendants Najera and Sundstedt. Plaintiff presented his opinions on this matter in a "disposition memorandum" which was "prepared in the course and scope of his employment", "pursuant to his duties as a prosecutor." (Opp. at 4:13-14; 8:18; 10:16.) Based on plaintiff's own allegations regarding the nature of the speech in question, this Court cannot find that the law clearly established that this speech was a matter of public concern or otherwise protected by the First Amendment.

A. Because The Speech In Question Arose Within The Scope Of Plaintiff's Employment And Within Internal Office Setting, It Cannot Be Afforded First Amendment Protection.

The particular "context" in which the speech in question took place must be closely considered in determining whether that speech involves a matter of public concern. *Connick v. Myers*, 461 U.S. 138, 146, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983). Plaintiff's opposition papers make clear that the speech upon which his First Amendment retaliation claims are based is the disposition memorandum he prepared regarding the *Cuskey* matter. (Opp. at 4:1-3, 4:13-14, 8:26-9:4, 9:13-15.) This memorandum, which was directed to defendant Sundstedt only, was prepared completely within the scope of plaintiff's employment and duties as a member of the district attorney's

office. These undisputed factors clearly weigh against any finding that the speech in question was protected by the First Amendment.

In *Gonzalez v. City of Chicago*, 239 F.3d 939 (7th Cir. 2001), the plaintiff, a former police officer who had been terminated, brought a section 1983 action against two of his supervisors, the chief of police, and the city, alleging that he had been retaliated against for his "speech as an [Office of Professional Standards] investigator". *Id.* at 940. The *Gonzalez* court affirmed the granting of the defendants' motion to dismiss on the ground that the speech in question – the **reports regarding police misconduct** that the plaintiff had written when he was an OPS investigator – **could not be characterized as the speech of a citizen upon matters of public concern.**

> "[T]he question before us is whether a public employee receives First Amendment protection for producing writings that may address matters of public concern, **but are also a routine requirement of the job**. [The plaintiff] may well have been motivated in part as a good citizen when he accepted the employment duties of reporting misconduct. Nevertheless, **he was clearly acting entirely in an employment capacity when he made those reports. The form of his speech (routine official reports), the content of the speech (required opinions on misconduct) and the context (pursuant to duties of the job), all indicate that [the plaintiff] did not speak 'as a citizen' on a matter of public concern**. . . . All of [the plaintiff]'s speech at issue – the written reports – was mandated in his capacity as an OPS investigator. While police misconduct is certainly a matter of public concern, the internal reports were

simply a summary of his findings following his official investigation."

Id. at 941-42 (emphasis added).

The *Gonzalez* court explained further that the "few courts that have addressed circumstances like these have found that the speech was not protected by the First Amendment." *Id.* at 942; *see Buazard v. City of Pocahontas*, 172 F.3d 546, 549 (8th Cir. 1999) (motion for summary judgment granted where a police officer's speech in question was not a matter of public concern where the statements were "entirely internal" in nature and the statements were "purely job-related"); *Thompson v. Scheid*, 977 F.2d 1017 (6th Cir. 1992) (speech made by public employee who investigated and wrote report on county commissioner acted in his role as fraud investigator and not citizen, and therefore did not speak on a matter of public concern warranting First Amendment protection); *see also Connick*, 461 U.S. at 143 ("The repeated emphasis in *Pickering* on the right of a public employee '**as a citizen**, in commenting upon matters of public concern,' was not accidental. This language, reiterated in all of *Pickering*'s progeny, reflects both the historical evolvement of the rights of public employees, and the common-sense realization that government offices could not function if every employment decision became a constitutional matter.") (footnotes omitted, emphasis added).[1]

[1] Plaintiff has not cited any cases which held that a statement, made strictly within the scope of the plaintiff's employment duties, and which was made in an entirely internal setting, involved a matter of public concern. Indeed, the instant case is substantively different from those cases where the speech, rather made internally or not, was not uttered within the scope of the plaintiff's employment. *See, e.g., Rankin*

(Continued on following page)

The facts in *Gonzalez* are remarkably analogous to the facts at issue in the instant case. As in *Gonzalez*, the speech in question – the disposition memorandum – pertained to alleged police misconduct, was entirely internal in nature, and prepared, as plaintiff admits, in the scope of his employment and pursuant to his duties as a prosecutor. Moreover, the crux of the memorandum was that the *Cuskey* case should be dismissed due to the questions regarding the deputies' affidavit; the decision whether to dismiss the case should certainly be characterized as an "internal office affair". *Connick*, 461 U.S. at 149. Indeed, regardless of whether the subject about which the speech was made was a matter of public concern, the undisputed facts regarding the circumstances under which the disposition memorandum was prepared establishes, as a matter of law, that plaintiff is not entitled to any protection under the First Amendment.[2]

At the very least, the case law discussed above removes any question as to whether, in March 2000, the law clearly established that the speech in question must be characterized as a matter of public concern. Due to the absence of such clearly established law, without proceeding

v. McPherson, 483 U.S. 386, 107 S.Ct. 2801, 97 L.Ed.2d 315 (1987) (clerical worker made statement regarding President Reagan's assassination attempt); *McKinley v. City of Eloy*, 705 F.2d 1110, 1114 (9th Cir. 1983) (police officer, in his role as a representative of a labor organization, publicly criticized the city's decision to not give the police a raise and discussed "the working relationship between the police union and elected city officials").

[2] To the extent that plaintiff's First Amendment claim is based on any other speech related to his investigation and conclusions regarding the *Cuskey* matter, the analysis dictated by *Gonzalez* is not affected since plaintiff concedes that he engaged in all such speech while he was "fulfilling his duties as a prosecutor". (Opp. at 10:20-21.)

any further in the required First Amendment analysis, defendants' entitlement to qualified immunity is apparent and should therefore be recognized.[3]

B. Based On The Balancing Required Under Pickering, This Court Cannot Find That The Law Clearly Established That Plaintiff's Speech Was Constitutionally Protected.

Even if a plaintiff's speech is deemed to have been of public concern, the court must still determine whether the speech "merits constitutional protection". *Brewster*, 149 F.3d at 979. In making this determination, the court must employ the balancing test articulated in *Pickering v. Board of Education*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968) – whether the plaintiff's interest in

[3] Plaintiff's assertion that defendant Najera violated *Brady v. Maryland* by ordering him to not produce his disposition memorandum to the criminal defendant is nothing more than a red herring. (Opp. at 5:1-5; 10:17-21.) Not only does this allegation have absolutely no nexus to plaintiff's First Amendment retaliation claim, it has no probative value since defendant Najera is entitled to absolute prosecutorial immunity for any acts undertaken in preparing for the initiation of a judicial proceeding. *Buckley v. Fitzsimmons*, 509 U.S. 259, 272-73, 113 S.Ct. 2606, 125 L.Ed.2d 209. Moreover, plaintiff's discussion of *Bradley v. Superior Court*, 49 Cal.App.4th 1108 (1996) is misplaced. This case is cited for the proposition that "district attorneys have a First Amendment Right to keep the public informed, respond to media questions, and ask other law enforcement agencies to conduct their own investigation." (Opp. at 9:25-27.) However, there is absolutely no evidence that plaintiff engaged in any of these actions in engaging in the "speech" upon which his First Amendment retaliation claim is based. The holding in *Bradley* does not enable plaintiff to overcome the fact that all of the speech in question was engaged fell completely within the scope of his employment and therefore cannot be deemed to have implicated a public concern, within the meaning of the required First Amendment analysis.

expressing himself outweighs the government's interest in promoting workplace efficiency and avoiding workplace disruption. *See Voigt v. Saveli*, 70 F.3d 1552, 1560-61 (9th Cir. 1995) (*Pickering* "requires particularized balancing on the unique facts presented in each case"). Because this determination "requires a fact-sensitive, context-specific balancing of competing interests, the law regarding public-employee free speech claims will 'rarely, if ever, be sufficiently "clearly established" to preclude qualified immunity". *Brewster*, 149 F.3d at 980. The court must decide "whether the outcome of the *Pickering* balance **so clearly favored [the plaintiff]** that it would have been patently unreasonable for the school officials to conclude that the First Amendment did not protect his speech." *Id.* (emphasis added).

In *Brewster*, the court assumed that the plaintiff's charges regarding miscalculation of school attendance records did implicate the public concern. However, the court also found that a "number of balancing considerations weigh in favor of the school officials": 1) whether the harmony among co-workers was disrupted; 2) whether the relevant working relationship is a close one which requires trust and respect; 3) whether the speech interferes with the fulfillment of his office duties; 4) whether the speech was directed to the public or the media since a narrow, limited focus and a limited audience weigh against a claim of protected speech; and 5) whether the allegations raised were determined to be false. *Id.* at 980-81.

Furthermore, the court explained that because both parties could "point to important interests supporting their respective sides of the *Pickering* balance", the question of whether the plaintiff's speech was protected was a "close one". *Id.* at 981. Nevertheless, the court held that it

need not resolve the merits, and that it had a "'much simpler task' . . . of deciding whether the *Pickering* test so clearly favors [the plaintiff] that it would have been unreasonable for the officials to believe that [the alleged retaliatory act] was lawful." *Id.* Specifically, based on the "competing considerations on each side of the *Pickering* balance", it could not conclude that the plaintiff's "right to speak was sufficiently 'clearly established' to defeat the school officials' assertion of qualified immunity.'" *Id.*

Plaintiff's very limited discussion of this important part of the required First Amendment analysis not only fails to address the clear implications of the instructions and holding of *Brewster*, but raises an argument which has no relevance whatsoever. (*See* Opp. at 12:20-13:9.)[4] Indeed, in the instant case, several of the factors identified in *Brewster* clearly weigh against the denial of qualified immunity. For purposes of this instant motion, the evidence is unrefuted that the working relationship between plaintiff and defendants was one which required professional trust and respect (*see* Sundstedt Depo., 29:17-30:5, 30:22-25, 31:17-23, 96:5-97:1, 110:11-111:17, attached

[4] Plaintiff contends that the Ninth Circuit has "drawn a clear line for government employers where the employee's speech involves wrongdoing or corruption, the disruption generated by an employee's accurate exposition of such conduct should not be factored into the *Pickering* balance." (Opp. at 13:3-6.) Although far from clear, plaintiff seems to suggest that because his speech exposed wrongdoing, the disruption which may have resulted should not be weighed in favor of a finding of qualified immunity. This suggestion should be rejected in light of the ruling at the motion to traverse hearing (as well as the ultimate convictions in the *Cuskey* case) which is inconsistent with the assertion that wrongdoing was exposed. Thus, the disruption which did result can and should be considered, in favor of defendants and against plaintiff.

hereto as Exhibit "H"); that the harmony between them was disrupted (Opp. at 5:10-15, 14:17-18, 16:14-18); and that the speech in question was directed to a very limited audience (Opp. at 4:1-3). Moreover, the truth of plaintiff's fundamental contention regarding the deputies' conduct was placed in serious doubt by the ruling at the motion to traverse hearing.

Thus, based on the breakdown of these factors, the finding that the law clearly established that plaintiff's speech was constitutionally protected simply cannot be made, thereby entitling defendants to qualified immunity. Plaintiff has presented no argument to preclude this ruling.

III. DEFENDANTS' ACTIONS WERE OBJECTIVELY REASONABLE.

Defendants have set forth a detailed explanation, which is supported by ample evidence, as to why their alleged acts of retaliation were objectively reasonable. Plaintiff's argument consists of nothing more than a regurgitation of the allegations of his complaint, without any assertions based on concrete admissible evidence, which adequately rebuts defendants' argument and corresponding evidence. (Opp. at 13:20-15:15.) Indeed, plaintiff's argument is replete with purely conclusory and speculative assertions. *See Reeves v. Sanderson Plumbing Products, Inc.*, ___ U.S. ___, 120 S.Ct. 2097, 2109 (2000) ("an employer would be entitled to judgment as a matter of law if the record conclusively revealed some other, nondiscriminatory reason for the employer's decision, or if the plaintiff created only a **weak issue of fact** as to whether the employer's reason was untrue and there was abundant and

uncontroverted independent evidence that no discrimination had occurred.") (emphasis added); *see also* Objections to Plaintiff's Evidence filed concurrently herewith.

Furthermore, the declarations submitted for the proposition that no one in the El Monte (otherwise known as Rio Hondo) area office ever requested another full-time filing deputy is simply irrelevant. The material undisputed fact is that defendant Sundstedt, as the Head Deputy District Attorney for the Pomona Branch Office, determined that the El Monte area office should, just like the other area offices of the Pomona Branch, be staffed with two full-time filing deputies. The opportunity to assign two full-time filing deputies arose in 1998 when the only filing deputy there, Mike Davis, transferred to a Los Angeles area office. (See Declaration of Sundstedt, ¶ 2.) Indeed, defendant Sundstedt's experience with previous Deputies in Charge of the El Monte area office was that, due to the fact that the office had only one full-time filing deputy, they often had to file cases themselves which took valuable time away from their ability to mentor and supervise the new deputies in their offices. (Sundstedt Dec., ¶ 3.) Moreover, at no time did the Deputy in Charge of the El Monte area office ever advise defendant Sundstedt that having two full-time filing deputies was not necessary. (Sundstedt Dec., ¶ 3.)

Furthermore, plaintiff's broad, conclusory assertion that there had been "no prior taking away of murder cases from any deputy district attorney to extend experience to lesser experienced attorneys" (Opp. at 14:26-27) has not been substantiated with anything close to sufficient evidence and has also been directly refuted. (Sundstedt Dec., ¶ 4; Kuhnert Dec., ¶ 5; Clem Dec., ¶ 5; Dukellis Dec., ¶ 5.) Plaintiff's factually unsupported contention that he

was the only calendar deputy from the Pomona Branch to have been assigned to a filing deputy position is also patently false. (Sundstedt Dec., ¶¶ 5-6; Kuhnert Dec., ¶¶ 3-4.)

Thus, even if the speech in question is found to be protected by the First Amendment, defendants are still entitled to qualified immunity because their alleged retaliatory actions were, in actuality, objectively reasonable and not improperly motivated.[5]

IV. PLAINTIFF FAILS TO PRESENT SUFFICIENT EVIDENCE OF PROXIMATE CAUSATION BETWEEN DEFENDANT SUNDSTEDT'S ALLEGED ACTIONS AND HIS DENIAL OF PROMOTION.

It is not reasonably disputed that defendant Sundstedt was the decision-maker with regard to all the alleged adverse employment actions at issue with the exception of plaintiff's denial of the Grade IV promotion. As more fully set forth above, there is ample unrefuted evidence demonstrating the legitimate and objectively reasonable grounds for the alleged adverse employment actions directed by defendant Sundstedt as the Head Deputy District Attorney of the Pomona Branch Office. Regarding plaintiff's denial of the Grade IV promotion,

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[5] By the same token, additional grounds for dismissing plaintiff's section 1983 claim are that 1) plaintiff has failed to prove that his speech was a substantial or motivating factor in the alleged retaliation and 2) defendants would have engaged in the same actions even in the absence of the speech in question. *Brewster*, 149 F.3d at 978. Indeed, contrary to plaintiff's bald assertion (Opp. at 15:12-14), there is no admissible evidence which establishes that plaintiff's speech was the substantial or motivating factor in the alleged constitutional deprivations.

just like any other section 1983 claim, a plaintiff must establish that the alleged constitutional deprivation was proximately caused by the purported misconduct. *Estate of Brooks ex rel. Brooks v. United States*, 197 F.3d 1245, 1248 (9th Cir. 1999) (where "the element of causation is missing from the § 1983 claim, . . . dismissal with prejudice was proper"); *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 837 (9th Cir. 1996) (proximate cause analysis of traditional tort law applies in section 1983 actions).

Plaintiff here contends that he was deprived of a promotion to Grade Level IV because defendant Sundstedt refused to recommend him to director George Knoke; such a communication "would have allowed his name to be submitted to [defendant Garcetti] for promotion." (Opp. at 15:4-7.) However, plaintiff has not and cannot present any admissible evidence that defendant Sundstedt's alleged actions proximately caused the denial of his promotion. In fact, the undisputed facts point to a contrary conclusion. Plaintiff was one of eight candidates for promotion who received the same outstanding rating from Sundstedt. Out of the four candidates who were ultimately promoted from the Pomona Branch Office, one was not even recommended by Sundstedt (Manny Garcia) and the candidate who was his second choice (Randy Harris) was not promoted. Thus, because there is no evidence the promotion hinged upon defendant Sundstedt's recommendation, there is no basis for finding that defendant Sundstedt engaged in any action which proximately caused the denial of promotion.

V. THE ALLEGATIONS AGAINST DEFENDANT GARCETTI PRECLUDE ANY FINDING OF SECTION 1983 LIABILITY.

As an initial matter, plaintiff has failed to present any admissible evidence to refute that Garcetti had no knowledge about plaintiff's opinions relating to the *Cuskey* case prior to the publication of the Grade IV promotion list. Plaintiff simply contends that defendant Garcetti should be held liable for the purported First Amendment violations simply because a few days prior to the denial of plaintiff's grievance, James Blancarte advised him of plaintiff's actions, and defendant Garcetti "did nothing to prevent the continued constitutional violation of plaintiff's rights", thereby ratifying "ratifying" the alleged misconduct of defendants Najera and Sundstedt. (Opp. at 15:19-16:8.) This theory of relief, on its face, is groundless since it lacks any basis for finding the required element of causation between the purported constitutional deprivations and any action by defendant Garcetti.[6]

Moreover, even if defendant Garcetti engaged in any action with regard to the grievance (which he did not), such action would not satisfy the proximate causation requirement which governs plaintiff's section 1983 claim.

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[6] Plaintiff's reliance on *Fuller v. City of Oakland*, 47 F.3d 1522 (9th Cir. 1995) is both misplaced and misleading. (Opp. at 16:2-5.) In *Fuller*, the Chief of Police was dismissed as a defendant, and the "delegation/ratification" theory of relief was only discussed in the context of the plaintiff's *Monell* claim against the City. In other words, this theory did not provide any basis for preserving an individual capacity section 1983 claim against the Chief. *Id.* at 1526, 1534-35. Plaintiff's reliance on *Hammond v. County of Madera*, 859 F.2d 797 (9th Cir. 1988) is also misplaced since its section 1983 liability analysis was also strictly limited to the plaintiff's *Monell* claim against the County – not an individual capacity section 1983 claim.

Plaintiff cannot dispute that all of the alleged adverse employment actions, including the denial of promotion to Grade IV, had already taken place by the time the grievance was filed. Indeed, those employment decisions were the subject matter of his employment grievance. (See copy of the relevant documents relating to plaintiff's employment grievance attached hereto as Exhibit "G.") Therefore, because the alleged misconduct on the part of defendant Garcetti simply could not have played any causal role in the alleged constitutional deprivations, the section 1983 claim against defendant Garcetti must be dismissed.

VI. PLAINTIFF FAILS TO PRESENT ANY VIABLE ARGUMENT AGAINST THE DISMISSAL OF HIS INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIM.

This state law claim is only directed against defendants Najera and Sundstedt. Plaintiff does not raise any argument which specifically responds to the arguments raised in defendants' Motion. In particular, plaintiff ignores the holding in *Janken v. G.M. Hughes Electronics*, 46 Cal.App.4th 55 (1996) that even improperly motivated management decisions do not provide a basis for an intentional infliction of emotional distress claim. Plaintiff also does not respond to defendants' contention that plaintiff failed to set forth any substantive factual explanation in his complaint in support of his emotional distress claim. Thus, plaintiff's state law claim should be summarily dismissed as well.

VII. CONCLUSION

For the reasons set forth above, and in the moving papers, defendants Gil Garcetti, Frank Sundstedt and Carol Najera respectfully request that the Court grant their Motion for Summary Judgment against plaintiff in its entirety. Alternatively, defendants request that the Court summarily adjudicate issues in favor of defendants as set forth in the Notice of this Motion.

DATED: January 22, 2002

FRANSCELL, STRICKLAND, ROBERTS & LAWRENCE

By Jin S. Choi for
Cindy S. Lee
Attorneys for Defendants
GIL GARCETTI,
FRANK SUNDSTEDT,
and CAROL NAJERA

DECLARATION OF JIN S. CHOI

I, Jin S. Choi, declare as follows:

1. I am an attorney at law, duly licensed to practice before this Court and all of the courts of the State of California, and am an associate of the law firm of Franscell, Strickland, Roberts & Lawrence, attorneys of record for defendants Gil Garcetti, Frank Sundstedt and Carol Najera in the above-captioned action. The matters stated herein are within my personal knowledge and, if duly sworn, I could and would competently testify thereto.

2. Attached hereto as Exhibit "G" is a true and correct copy of plaintiff Richard Ceballos' employment grievance and findings relating to the same which were exchanged at the Early Meeting of Counsel.

3. Attached hereto as Exhibit "H" is a true and correct copy of the cover page and referenced pages of the deposition transcript of Frank Sundstedt.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 21st day of January 2002, at Pasadena, California.

/s/ Jin S. Choi
Jin S. Choi

EXHIBIT "G"

DEPARTMENT OF THE DISTRICT ATTORNEY
GRIEVANCE FORM

DATE: SEPTEMBER 5. 2000

EMPLOYEE : RICHARD CEBALLOS
POSITION : DEPUTY D.A. III

OFFICE/DIV : EL MONTE AREA
POMONA BRANCH
TELEPHONE : 909-620-3350

ADDRESS : 400 CIVIC CENTER PLAZA, ROOM 201,
POMONA, CA 91766

EMPLOYEE REPRESENTATIVE: TO BE ANNOUNCED

NATURE OF GRIEVANCE :
[SEE ATTACHED]

REQUESTED REMEDY :
[SEE ATTACHED]

INFORMAL DISCUSSION WITH
IMMEDIATE SUPERIOR: NOT HELD

EMPLOYEE SIGNATURE: /s/ Richard Ceballos

IMMEDIATE SUPERVISOR'S
NAME AND SIGNATURE: NOT OBTAINED

DATE RECEIVED: _____

NATURE OF GRIEVANCE

I.

INTRODUCTION

I, RICHARD CEBALLOS, ALLEGE THE FOLLOWING:

THAT POMONA HEAD DEPUTY FRANK SUNDSTEDT AND ASSISTANT HEAD DEPUTY CAROL NAJERA HAVE DELIBERATELY, WILLFULLY, AND INTENTIONALLY ENGAGED IN A CAMPAIGN OF HARASSMENT, RETALIATION, AND REPRISAL AGAINST ME, AS A RESULT OF MY REPORTING THAT CERTAIN POLICE OFFICERS MAY HAVE FABRICATED PROBABLE CAUSE IN ORDER TO OBTAIN A SEARCH WARRANT, AND MY SUBSEQUENT TESTIMONY TO THAT EFFECT, IN THE CASE OF THE *PEOPLE OF THE STATE OF CALIFORNIA VS MICHAEL CUSKEY,* ET AL (POMONA SUPERIOR COURT NO. KA045491)

THAT ASSISTANT HEAD DEPUTY CAROL NAJERA KNOWINGLY AND MALICIOUSLY ATTEMPTED TO DISSUADE ME FROM TESTIFYING IN THE AFOREMENTIONED CASE IN VIOLATION OF PENAL CODE SECTION 136.1(C)(2).

THAT, AS A DIRECT RESULT OF THE POSITION I TOOK AND THE TESTIMONY I GAVE, IN THE

AFOREMENTIONED CASE, FRANK SUNDSTEDT AND CAROL NAJERA HAVE CREATED AND MAINTAINED A HOSTILE WORK ENVIRONMENT FOR ME. SPECIFICALLY, THEY DEMOTED ME FROM THE POSITION OF CALENDAR DEPUTY TO THAT OF TRIAL DEPUTY; THEY TOOK A MURDER CASE PREVIOUSLY ASSIGNED TO ME AND REASSIGNED IT TO ANOTHER LESS EXPERIENCED DEPUTY WITH NO MURDER TRIAL EXPERIENCE; THEY HAVE REFUSED TO ASSIGN ME ANY NEW MURDER CASES EVEN THOUGH LESSER EXPERIENCED DEPUTIES CONTINUE TO BE ASSIGNED THESE TYPES OF CASES; THEY ORDERED MY TRANSFER TO THE EL MONTE AREA OFFICE, AND THEY WILLFULLY AND MALICIOUSLY INFLUENCED THIS OFFICE'S DECISION TO DENY ME A GRADE IV PROMOTION.

II.

FACTS

1. ON OR ABOUT MARCH 2, 2000, I SUBMITTED A MEMO (ATTACHED AS EXHIBIT NO. 1) TO HEAD DEPUTY FRANK SUNDSTEDT, ESSENTIALLY ADVISING HIM THAT I BELIEVED THAT CERTAIN POLICE OFFICERS HAD FABRICATED PROBABLE CAUSE IN ORDER TO SECURE A SEARCH WARRANT IN VIOLATION OF *FRANKS V. DELAWARE*, AND REQUESTING PERMISSION TO DISMISS THE INFORMATION AGAINST THE NAMED DEFENDANTS PURSUANT TO PENAL CODE SECTION 1385.

2. ON OR ABOUT MARCH 3, 2000, FRANK SUNDSTEDT FAXED A COPY OF MY MEMO TO LOS

ANGELES SHERIFF'S CAPTAIN ROBERT BINKLEY OF THE INDUSTRY SHERIFF'S STATION.

3. ON OR ABOUT MARCH 9, 2000, A MEETING WAS HELD IN FRANK SUNDSTEDT'S OFFICE TO DISCUSS THE AFOREMENTIONED CASE. PRESENT AT THE MEETING WERE: FRANK SUNDSTEDT, ASSISTANT HEAD DEPUTY CAROL NAJERA, MYSELF, DDA STEVEN GALLON, CAPTAIN BINKLEY (INDUSTRY STATION), LIEUTENANT ED BARSTOW (INDUSTRY STATION) AND THE AFFIANT OF THE SEARCH WARRANT, DETECTIVE KEITH WALLS. DURING THIS MEETING, LIEUTENANT ED BARSTOW VERBALLY ATTACKED ME AND DEMANDED THAT I BE REMOVED FROM THE CASE BECAUSE HE FELT, AMONG OTHER THINGS, THAT I WAS "ACTING LIKE A DEFENSE ATTORNEY AND NOT A PROSECUTOR," BECAUSE I CONCLUDED THAT THE WARRANT WAS INVALID AND SHOULD BE QUASHED. AT NO TIME DID FRANK SUNDSTEDT OR CAROL NAJERA INTERRUPT OR STOP THE LIEUTENANT FROM VERBALLY ATTACKING ME. THEY MERELY SAT AND LISTENED. IN ADDITION, CAPTAIN BINKLEY STATED DURING THE MEETING THAT HE WAS CONCERNED THAT ONE OF THE DEFENDANTS IN THIS CASE WOULD FILE A LAWSUIT AGAINST THE SHERIFF'S DEPARTMENT IF WE DISMISSED THE CASE (IT WAS LATER LEARNED DEFENDANT CUSKEY HAD FILED A FEDERAL CIVIL RIGHTS LAWSUIT AGAINST DEPUTY SIMPKINS PRIOR TO THE ISSUANCE OF THIS SEARCH WARRANT. THIS FACT, HOWEVER, WAS NOT DISCLOSED TO THE JUDGE WHO REVIEWED AND ULTIMATELY SIGNED THE WARRANT). AT THE CONCLUSION OF THE MEETING, FRANK SUNDSTEDT

INFORMED THE CAPTAIN THAT THE MATTER WOULD PROCEED TO MOTION NOTWITHSTANDING "OBVIOUS PROBLEMS" WITH THE SEARCH WARRANT. AFTER THE CAPTAIN, LIEUTENANT, AND DETECTIVE DEPARTED, I COMPLAINED TO FRANK SUNDSTEDT THAT IT APPEARED THAT HE WAS "KOWTOWING" TO THE SHERIFF'S DEPARTMENT SIMPLY BECAUSE OF THEIR EXPRESSED FEAR OF POSSIBLE CIVIL LITIGATION.

4. ON OR ABOUT MARCH 14, 2000, I INFORMED FRANK SUNDSTEDT AND CAROL NAJERA THAT I HAD BEEN SUBPOENAED TO TESTIFY AT THE MOTION TO TRAVERSE BY ONE OF THE DEFENSE ATTORNEY'S IN THE AFOREMENTIONED CASE. I FURTHER INFORMED CAROL NAJERA THAT PORTIONS OF MY MEMO TO FRANK SUNDSTEDT, DATED MARCH 2, 2000, AND AN ADDENDUM TO THIS MEMO, DATED MARCH 6, 2000, CONTAINED STATEMENTS BY DETECTIVE WALLS THAT SHOULD BE TURNED OVER TO THE DEFENSE PRIOR TO THIS HEARING. CAROL NAJERA THEN INSTRUCTED ME TO PREPARE AN ENTIRELY NEW MEMO OR REPORT DETAILING ONLY THE DETECTIVE'S STATEMENTS AND OMITTING ALL THE OTHER INFORMATION WHICH WAS CONTAINED IN MY MEMO. I INFORMED MS. NAJERA THAT I DID NOT BELIEVE THAT PREPARING A NEW AND SEPARATE REPORT OR MEMO WAS THE APPROPRIATE COURSE TO TAKE. RATHER I SUGGESTED THAT MY MEMO SHOULD BE TURNED OVER TO THE DEFENSE IN ITS PRESENT FORM WITH THE PORTIONS THAT WERE CLEARLY ATTORNEY WORK PRODUCT "BLACKED OUT". MS. NAJERA ANGRILY RESPONDED THAT I WAS "WRONG" AND

SHE DEMANDED THAT I PREPARE A NEW REPORT OR MEMO AS SHE DIRECTED. I TOLD MS. NAJERA THAT I DID NOT BELIEVE HER APPROACH WAS ETHICAL AND THAT I WOULD NOT DO AS SHE ORDERED. GEORGE PALMER OF THE PROFESSIONAL RESPONSIBILITY UNIT WAS THEN CONTACTED BY MS. NAJERA, AND HE CONCURRED THAT MY POSITION WAS THE CORRECT AND ETHICAL APPROACH.

5. ON OR ABOUT MARCH 16, 2000, ASSISTANT HEAD DEPUTY CAROL NAJERA CALLED ME INTO HER OFFICE IN ORDER TO DISCUSS THE AFOREMENTIONED CASE. MS. NAJERA BEGAN BY STATING THAT SHE FELT THAT I WAS "DEAD WRONG" IN MY ASSESSMENT OF THE CASE AND THE VALIDITY OF THE SEARCH WARRANT. SHE STATED THAT, IN HER OPINION, THE DETECTIVE (KEITH WALLS) HAD SIMPLY MADE A MENTAL ERROR IN DRAFTING THE SEARCH WARRANT, ESPECIALLY AS IT RELATED TO HIS USE OF THE WORD "DRIVEWAY", AND THAT THERE WAS NO ATTEMPT TO MISLEAD OR DECEIVE THE MAGISTRATE. I RESPONDED TO MS NAJERA THAT I DISAGREED WITH HER ASSESSMENT AND OPINION AND FELT STRONGLY THAT THE DEPUTIES AND DETECTIVE HAD INTENTIONALLY AND DELIBERATELY FABRICATED PROBABLE CAUSE IN ORDER TO SECURE THE SEARCH WARRANT. I BASED MY OPINION, IN PART, ON THE FACT THAT ONE OF THE DEFENDANTS HAD PREVIOUSLY FILED A FEDERAL CIVIL RIGHTS LAWSUIT AGAINST DEPUTY SIMPKINS, WHO WAS ONE OF THE DEPUTIES WHO ALLEGEDLY OBSERVED THE SO-CALLED "TIRE TRACKS", AND, ALSO IN PART, ON THE FACT

THAT A NARCOTICS DETECTING CANINE WAS USED IN THE SEARCH FOR STOLEN AUTO PARTS. MS. NAJERA BEGAN TO GET IRRITATED WITH ME. SHE RAISED HER VOICE AND KEPT INSISTING THAT MY ASSESSMENT DID NOT MAKE ANY SENSE. SHE THEN ASKED ME TO EXPLAIN MY POSITION MORE CLEARLY. I RESPONDED THAT, IN EFFECT, I HAD MADE MY POSITION AS CLEAR AS POSSIBLE. I INFORMED HER THAT MY POSITION WOULD NOT CHANGE AND THAT IF I WERE ASKED DURING THE UPCOMING HEARING FOR MY OPINION REGARDING THE VALIDITY OF THE SEARCH WARRANT THAT I WOULD STATE THAT I BELIEVED IT WAS INVALID IN ACCORDANCE WITH THE *FRANKS V. DELAWARE* DECISION. MS. NAJERA THEN BEGAN SHAKING HER HEAD BACK AND FORTH AND STATED TO ME "IF YOU KEEP THINKING LIKE THAT... TALKING LIKE THAT, YOU'RE GOING TO GET YOURSELF IN TROUBLE WITH THIS OFFICE." AFTER HEARING THIS STATEMENT, I FELT MS. NAJERA WAS ATTEMPTING TO DISSUADE ME FROM TESTIFYING TRUTHFULLY. I HAD THE DISTINCT IMPRESSION THAT IF I TESTIFIED TRUTHFULLY AT THE UPCOMING HEARING ON THE MOTION TO TRAVERSE, THERE WOULD BE SOME FORM OF RETALIATION OR REPRISAL BY FRANK SUNDSTEDT AND CAROL NAJERA.

6. ON OR ABOUT MARCH 20, 2000, THE HEARING ON THE MOTION TO TRAVERSE TOOK PLACE IN DEPARTMENT "E" OF POMONA SUPERIOR COURT. THE DEFENSE CALLED ME AS A WITNESS. CAROL NAJERA HAD DETECTIVE WALLS REMAIN IN THE

COURTROOM, SITTING NEXT TO HER. AS I TESTIFIED, CAROL NAJERA MADE NUMEROUS OBJECTIONS BOTH IN AND OUT OF MY PRESENCE CONCERNING THE SCOPE AND LIMITS OF MY TESTIMONY. WHILE ON THE STAND, CAROL NAJERA TREATED ME AS IF I WERE A HOSTILE WITNESS. SHE BECAME VISIBLY UPSET AT SOME OF MY RESPONSES, REPEATEDLY SHAKING HER HEAD BACK AND FORTH AS IF IN ANGER. AFTER THE HEARING, SHE CALLED ME INTO HER OFFICE AND TOLD ME THAT SHE "WANTED TO SHUT ME UP" AS I WAS TESTIFYING DURING THE HEARING.

7. SUBSEQUENT TO THIS HEARING, BOTH FRANK SUNDSTEDT AND CAROL NAJERA HAVE ESSENTIALLY RETALIATED AGAINST ME AS A RESULT OF THE POSITION I TOOK AND THE TESTIMONY I GAVE IN THIS CASE. THEY DEMOTED ME FROM THE POSITION OF CALENDAR DEPUTY TO THAT OF TRIAL DEPUTY, DESPITE MY HAVING BEEN A CALENDAR DEPUTY FOR OVER A YEAR, AND FRANK SUNDSTEDT'S "OUTSTANDING" RATINGS ON MY PERFORMANCE EVALUATIONS FOR THE PAST TWO YEARS.

8. ON AUGUST 25, 2000, I WAS DENIED A GRADE IV PROMOTION DESPITE THE FACT THAT I HAVE A 100 A.P. AND AM IN BAND ONE. I FEEL THAT I AM CLEARLY DESERVING OF THE PROMOTION, GIVEN MY ELEVEN YEARS OF EXPERIENCE, MY NUMBER OF FELONY TRIALS, MY CALENDAR DEPUTY EXPERIENCE, MY POSITION AS AN INSTRUCTOR WITH THE NATIONAL COLLEGE OF DISTRICT ATTORNEYS, AND MY CONSISTENT "OUTSTANDING" PERFORMANCE EVALUATIONS. I BELIEVE THAT, DESPITE

THESE QUALIFICATIONS, FRANK SUNDSTEDT AND CAROL NAJERA WILLFULLY AND MALICIOUSLY INFLUENCED THIS OFFICE IN DENYING MY PROMOTION TO GRADE IV, AS FURTHER RETALIATION FOR MY ACTIONS IN THE *CUSKEY* CASE.

9. ON AUGUST 28, 2000, CAROL NAJERA CALLED ME INTO HER OFFICE. SHE INFORMED ME THAT MY ASSIGNMENT WAS GOING TO CHANGE. SHE TOLD ME THAT IF I WANTED TO REMAIN IN POMONA THAT I WOULD HAVE TO FILE ONLY MISDEMEANORS. SHE THEN SAID THAT IF I DID NOT WANT TO FILE MISDEMEANORS, SHE WOULD TRANSFER ME TO THE EL MONTE AREA OFFICE. SHE THEN ASKED ME TO CHOOSE. I INFORMED MS. NAJERA THAT I WAS NOT GOING TO CHOOSE BECAUSE I DID NOT WANT TO DO EITHER. I FELT THAT, GIVEN MY YEARS OF EXPERIENCE, FILING MISDEMEANOR CASES WAS CLEARLY A PUNITIVE ACT ON THE PART OF MS. NAJERA. I ALSO DID NOT WANT TO GO EL MONTE AS IT WOULD BE A LONGER COMMUTE IN HEAVY TRAFFIC FOR ME. SHE TOLD ME THAT, IF I DID NOT CHOOSE ONE OF THESE OPTIONS, SHE WOULD SEND ME TO EL MONTE EFFECTIVE SEPTEMBER 5, 2000. I FEEL THAT HER CONDUCT IN THIS INSTANCE, RESULTING IN MY TRANSFER, IS FURTHER EVIDENCE OF THE RETALIATORY AND VINDICTIVE BEHAVIOR THAT FRANK SUNDSTEDT AND CAROL NAJERA HAVE DEMONSTRATED EVER SINCE THE SUPPRESSION HEARING IN THE *CUSKEY* CASE.

REQUESTED REMEDIES

1. THAT THE DISTRICT ATTORNEY SPECIFICALLY ORDER SUPERVISORS FRANK SUNDSTEDT AND CAROL NAJERA TO IMMEDIATELY CEASE ANY AND ALL PUNITIVE, RETALIATORY, AND HARASSING CONDUCT TOWARDS MYSELF.

2. THAT THE ISSUE CONCERNING CAROL NAJERA'S ATTEMPT TO DISSUADE ME FROM TESTIFYING IN THE MATTER OF THE *PEOPLE OF THE STATE OF CALIFORNIA V. MICHAEL CUSKEY, ET AL* (POMONA SUPERIOR CASE NO. KA045491) BE REFERRED TO THE CALIFORNIA ATTORNEY GENERAL'S OFFICE FOR POSSIBLE CRIMINAL PROSECUTION [PENAL CODE SECTION 136.1(A)(2)].

3. THAT THE DISTRICT ATTORNEY FORMULATE AND INSTITUTE A FORMAL, OFFICE WIDE POLICY FOR THOSE INSTANCES IN WHICH A DEPUTY D.A. HAS REASON TO BELIEVE THAT A LAW ENFORCEMENT OFFICER MAY HAVE COMMITTED PERJURY, GIVEN FALSE OR MISLEADING TESTIMONY OR DECLARATION, PLANTED EVIDENCE, OR COMMITTED SOME OTHER FORM OF MISCONDUCT, WHICH DIRECTLY OR INDIRECTLY AFFECTS THE INTEGRITY OF THE JUDICIAL SYSTEM. THE POLICY SHOULD SPECIFICALLY ENCOURAGE ALL DISTRICT ATTORNEY PERSONNEL TO REPORT ANY INCIDENTS OF SUSPECTED POLICE MISCONDUCT WITHOUT FEAR OF REPRISAL OR OTHER PUNITIVE ACTION BY THIS OFFICE. THE POLICY SHOULD ALSO DIRECT SUPERVISORS THAT THEY MUST NOT, IN ANY WAY, DISCOURAGE THE REPORTING OF POLICE MISCONDUCT AND MUST NOT TAKE ANY

PUNITIVE, RETALIATORY, OR OTHER SIMILAR ACTION AGAINST AN EMPLOYEE WHO REPORTS SUCH MISCONDUCT. FURTHER, THE POLICY SHOULD OBLIGATE THE SUPERVISOR TO PROTECT THE EMPLOYEE FROM BEING SUBJECTED TO ANY FORM OF HARASSMENT OR REPRISAL FROM THE INVOLVED LAW ENFORCEMENT OFFICER OR AGENCY.

4. THAT THE DISTRICT ATTORNEY DIRECT THE OFFICE'S SPECIAL INVESTIGATIONS DIVISION (SID) TO CONDUCT A THOROUGH INVESTIGATION INTO THE VALIDITY OF THE SEARCH WARRANT IN THE CASE OF THE *PEOPLE OF THE STATE OF CALIFORNIA V. MICHAEL CUSKEY ET AL (KA045491).*

5. THAT THE DISTRICT ATTORNEY RESCIND MY TRANSFER TO THE EL MONTE AREA OFFICE.

6. THAT THE DISTRICT ATTORNEY PROMOTE ME TO GRADE IV.

TO : FRANK SUNDSTEDT, HEAD DEPUTY, POMONA BRANCH
FROM : RICHARD CEBALLOS, DEPUTY DISTRICT ATTORNEY
DATE : MARCH 2, 2000
RE : PEOPLE V MICHAEL CUSKEY, RANDY LONGORIA, AND DOUGLAS OJALA

CASE NUMBER KA045491

THE ABOVE-NAMED DEFENDANTS ARE CHARGED WITH SEVERAL NARCOTIC AND WEAPON VIOLATIONS PURSUANT TO PENAL CODE SECTION 12021(A) AND HEALTH AND SAFETY CODE SECTION

11378 (NOTE: DEFENDANT OJALA HAS ALREADY PLED GUILTY AND IS CURRENTLY SERVING A ONE YEAR JAIL SENTENCE). THEIR ARRESTS CAME ABOUT AS A RESULT OF A SEARCH WARRANT EXECUTED ON THEIR PROPERTY ON OR ABOUT AUGUST 4, 1999.

A MOTION TO TRAVERSE THIS SEARCH WARRANT HAS BEEN FILED AND IS SET FOR HEARING ON MARCH 6, 2000 IN DEPT. E. THE MOTION ALLEGES THAT THE AFFIANT (LOS ANGELES COUNTY DEPUTY SHERIFF KEITH WALLS. INDUSTRY STATION) MADE STATEMENTS OR OMISSIONS OF FACT IN THE SEARCH WARRANT "THAT WERE DELIBERATELY FALSE OR IN RECKLESS DISREGARD OF THE TRUTH".

AFTER REVIEW OF THE CASE FILE AS WELL AS A PERSONAL VIEW OF THE LOCATION, I BELIEVE THAT FOR THE REASONS SET FORTH BELOW THAT THE DEFENSE MOTION TO TRAVERSE THE WARRANT HAS MERIT, AND I REQUEST PERMISSION TO DISMISS THE INFORMATION AGAINST DEFENDANTS CUSKEY AND LONGORIA PURSUANT TO PENAL CODE SECTION 1385. I ALSO REQUEST PERMISSION TO HAVE DEFENDANT OJALA'S SENTENCE RECALLED AND THE CASE AGAINST HIM DISMISSED IN THE LIKE MANNER.

DISCUSSION

ON AUGUST 3, 1999, LOS ANGELES COUNTY DEPUTY SHERIFFS SIMPKINS AND SPITULSKI OF THE INDUSTRY STATION OBSERVED A STRIPPED PICKUP TRUCK PARKED ON A RESIDENTIAL STREET (241

3RD ST) IN THE CITY OF BASSET. THE DEPUTIES CONTACTED DEPUTY KEITH WALLS OF THE AUTO THEFT DETAIL AND INFORMED HIM OF THEIR FINDINGS. DEPUTY WALLS WENT TO THE LOCATION TO VIEW THE PICKUP HIMSELF AND HE LATER CONFIRMED THAT THE PICKUP WAS INDEED STOLEN.

DEPUTY SIMPKINS AND SPITULSKI FURTHER ADVISED DEPUTY WALLS THAT THEY HAD OBSERVED "TIRE TRACKS WHICH APPEARED TO MATCH THE TREAD PATTERN" OF THE STOLEN TRUCK LEAD "TO A FENCE AT THE END OF A **LONG DRIVEWAY**" (EMPHASIS ADDED) THAT RAN EASTBOUND FROM THE STREET WHERE THE TRUCK WAS LOCATED. THEY FURTHER ADVISED DEPUTY WALLS THAT "THE TIRE TRACKS STOPPED AT THE ENTRANCE TO A FENCED-OFF PIECE OF PROPERTY" (WHICH HAPPENED TO BE DEFENDANT'S PROPERTY). IN ADDITION, THE DEPUTIES ADVISED DEPUTY WALLS THAT THEY HAD OBSERVED THREE (3) WHEELS AND TIRES INSIDE THE FENCED-OFF PROPERTY WHICH APPEARED TO MATCH THE WHEEL AND TIRE MOUNTED ON THE LEFT FRONT OF THE STOLEN PICKUP. THEY ALSO ADVISED DEPUTY WALLS THAT THE DIRT INSIDE THE FENCED IN AREA APPEARED TO HAVE BEEN "FRESHLY RAKED AND WATERED, AS WOULD BE INDICATIVE OF AN ATTEMPT TO DISGUISE FRESH TIRE TRACK". LASTLY, THEY ADVISED DEPUTY WALLS THAT THEY SAW A LARGE OBJECT INSIDE THE FENCE WHICH WAS COVERED WITH A TARP

THAT "APPEARED TO HAVE THE SAME DIMENSIONS" AS THE ENGINE THAT WAS REMOVED FROM THE STOLEN PICKUP.

BASED UPON THIS INFORMATION, DEPUTY WALLS SECURED A SEARCH WARRANT FOR THE DEFENDANTS' PROPERTY SEEKING EVIDENCE RELATING TO THE STOLEN PICKUP TRUCK. THE SEARCH WARRANT WAS PREPARED AND EXECUTED THE FOLLOWING DAY.

THE SEARCH, HOWEVER, FAILED TO UNCOVER ANY STOLEN AUTO PARTS, INCLUDING ANY PARTS FROM THE STOLEN PICKUP HOWEVER, WITH THE AID OF A DRUG SNIFFING CANINE, THE SEARCH DID UNCOVER SMALL AMOUNTS OF METHAMPHETAMINE AND SEVERAL FIREARMS ON THE PROPERTY.

THE PROBABLE CAUSE BASIS FOR THE SEARCH WARRANT WAS PRIMARILY BASED UPON ONE CRUCIAL OBSERVATION AND STATEMENT: I.E., THAT "TIRE TRACKS" FROM THE STOLEN TRUCK APPARENTLY LED TO THE DEFENDANT'S PROPERTY. WHILE DEPUTY WALLS DOES STATE THAT THE TIRE TRACKS ARE ALONG A **"LONG DRIVEWAY"** (AFFIDAVIT, PAGE 6, LINE 24). INVESTIGATION HAS REVEALED THAT HIS DESCRIPTION OR CHARACTERIZATION OF THIS ROADWAY IS GROSSLY INACCURATE.

IN REALITY, THIS SO-CALLED "DRIVEWAY" IS FOR ALL PRACTICAL PURPOSES A SEPARATE RESIDENTIAL STREET (ALTHOUGH IT IS NOT NAMED AS SUCH). THIS SO-CALLED "DRIVEWAY" IS APPROXIMATELY 300 FEET IN TOTAL LENGTH FROM DEFENDANTS

GATE TO 3RD STREET. WHERE THE STOLEN TRUCK WAS LOCATED. THE ROADWAY'S WIDTH, APPROXIMATELY 30 TO 40 FEET, APPEARS EQUAL TO IF NOT GREATER THAN A STANDARD RESIDENTIAL STREET. IN ADDITION, THERE ARE NO LESS THAN NINE (9) OTHER SEPARATE RESIDENCES AND PROPERTIES THAT EXIST ALONG THIS SO-CALLED DRIVEWAY, AND THESE RESIDENTS AND OWNERS MUST USE THIS ROADWAY IN ORDER TO REACH THEIR RESPECTIVE SEPARATE PROPERTIES. LASTLY, THIS SO-CALLED DRIVEWAY IS CONSTRUCTED OF A COMBINATION OF ASPHALT (BROKEN IN NUMEROUS PLACES), GRAVEL, AND DIRT. HOWEVER, THE ROADWAY DOES NOT APPEAR TO BE OF A NATURE CONDUCIVE TO MAINTAINING DISCERNABLE TIRE TRACKS ALONG ITS TOTAL LENGTH (ALTHOUGH TIRE TRACKS ARE MORE READILY DISCERNABLE TOWARDS THE END OF THIS ROADWAY NEAR THE GATE TO DEFENDANT'S PROPERTY). PHOTOGRAPHS OF THIS SO-CALLED DRIVEWAY AND THE SURROUNDING AREA ARE ATTACHED. A VIDEOTAPE OF THIS AREA HAS BEEN PREPARED BY DEFENDANT LONGORIA'S ATTORNEY AND HAS ALSO BEEN REVIEWED.

WHILE DEPUTY WALLS STATES IN HIS AFFIDAVIT THAT HE IS RELYING UPON THE OBSERVATIONS OF DEPUTIES SIMPKINS AND SPITULSKI, HE ACTUALLY WAS AT SOME POINT PRESENT AT THE LOCATION WHERE THE STOLEN PICKUP TRUCK WAS FOUND, AND ACCORDINGLY, HE WAS IN A POSITION TO SEE FOR HIMSELF THE PHYSICAL NATURE OF THIS ROADWAY. YET DESPITE THIS APPARENT AWARENESS, HIS AFFIDAVIT IS WORDED TO DESCRIBE THIS

ROADWAY SIMPLY AS A "LONG DRIVEWAY" BUT BY DESCRIBING THE ROADWAY IN THIS FASHION AND BY OMITTING ANY REFERENCE TO THE FACT THAT THIS ROADWAY IS APPROXIMATELY 300 FEET LONG AND IS USED BY OTHER RESIDENTS, THE MAGISTRATE WHO REVIEWED THE SEARCH WARRANT WOULD UNDOUBTEDLY BE LEFT WITH THE IMPRESSION THAT ONLY THE DEFENDANTS HAD ACCESS TO AND USED THIS ROAD TO ENTER AND LEAVE THEIR RESIDENCE. AND THEREFORE THE STOLEN PICKUP TRUCK HAD TO HAVE COME FROM THE DEFENDANT'S PROPERTY. IN SHORT, THE DEPUTY'S DESCRIPTION OR CHARACTERIZATION OF THIS ROADWAY AS SIMPLY A "LONG DRIVEWAY" IS CLEARLY MISLEADING.

FURTHERMORE, IT APPEARS UNLIKELY THAT THE DEPUTIES COULD ACTUALLY DISCERN VISIBLE TIRE TRACKS ALONG THE ENTIRE DISTANCE OF THIS ROADWAY OR EVEN ON THE ACTUAL STREET. I PERSONALLY DROVE ALONG A PORTION OF THIS SAME ROADWAY IN A SPORTS UTILITY VEHICLE AND I COULD NOT DETECT ANY TIRE TRACKS ON THE GROUND LEFT BY MY VEHICLE. NOW THERE ARE AREAS WHICH ARE COVERED BY A COMBINATION OF DIRT AND GRAVEL, MOSTLY TOWARDS THE BACK, WHERE TIRE TRACKS COULD BE SEEN, BUT IT WAS ALMOST IMPOSSIBLE TO ASCERTAIN IF THEY CAME FROM THE OTHER RESIDENTS WHO USE THIS ROAD. DEPUTY WALLS' DECISION TO RELY ON THE REPORTED OBSERVATIONS OF DEPUTY SIMPKINS AND SPITULSKI IN THIS REGARD, WITHOUT ATTEMPTING TO VERIFY THE SAME, IS

SIGNIFICANT AND COULD LEAD TO THE CONCLUSION THAT THE TIRE TRACKS NEVER EXISTED AT ALL. WHEN I INFORMED DEPUTY WALLS OF THE DEFENSE MOTION AND SPECIFIC ALLEGATION THAT THE DEPUTIES HAD LIED TO HIM ABOUT SEEING TIRE TRACKS, HIS RESPONSE WAS "WELL, THAT'S WHAT THEY TOLD ME."

IN ACCORDANCE WITH **FRANKS V. DELAWARE** (1978) 438 U.S. 154, THE ABOVE REFERENCED MISREPRESENTATIONS AND OMISSIONS OF FACTS WERE NO DOUBT SIGNIFICANT IN THAT HAD THE MAGISTRATE WHO SIGNED THE WARRANT BEEN MADE AWARE OF THE TRUE AND FULL FACTS. IT IS UNLIKELY THAT HE WOULD HAVE SIGNED THE WARRANT AT ALL. IT IS UNK[N]OWN WHETHER SAID MISREPRESENTATIONS AND OMISSIONS WERE DONE DELIBERATELY OR IN RECKLESS DISREGARD OF THE TRUTH.

CONCLUSION

BECAUSE IT APPEARS THAT THE AFFIDAVIT WAS INCOMPLETE AND INACCURATE CONCERNING ALL OF THE FACTS AS THEY EXISTED, THE SEARCH WARRANT SHOULD BE QUASHED. THE AFFIDAVIT'S REMAINING CONTENT IS INSUFFICIENT TO JUSTIFY A CONTINUED FINDING OF PROBABLE CAUSE, AND THERE IS NO REMAINING EVIDENCE SUFFICIENT TO SUSTAIN A CONVICTION AGAINST EITHER DEFENDANT.

ACCORDINGLY, THE CHARGES AGAINST DEFENDANT CUSKEY AND DEFENDANT LONGORIA SHOULD BE DISMISSED PURSUANT TO PENAL

CODE SECTION 1385. IN ADDITION, THE SENTENCE PREVIOUSLY IMPOSED UPON DEFENDANT OJALA SHOULD BE RECALLED AND HIS CASE LIKEWISE DISMISSED.

TO : FRANK SUNDSTEDT, HEAD DEPUTY,
POMONA BRANCH
FROM : RICHARD CEBALLOS, DEPUTY
DISTRICT ATTORNEY [/s/ RC]
RE : PEOPLE V CUSKEY, ET AL
CASE NUMBER KA045491
DATE : MARCH 6, 2000

ADDENDUM TO MEMO, DATED MARCH 2, 2000

ON MARCH 3, 2000 AT APPROXIMATELY 2:15 P.M., I RECEIVED A TELEPHONE CALL FROM DETECTIVE KEITH WALLS IN REGARDS TO THE ABOVE-MENTIONED CASE, I INFORMED HIM THAT THE CASE WOULD LIKELY BE DISMISSED BECAUSE OF PROBLEMS ASSOCIATED WITH THE SEARCH WARRANT. SPECIFICALLY, I INFORMED HIM THAT HIS USE OF THE WORD "DRIVEWAY" IN THE WARRANT WAS GROSSLY INACCURATE AND WOULD UNDOUBTEDLY LEAD TO AN UNFAVORABLE RULING ON THE PENDING MOTION TO TRAVERSE. HE STATED THAT HE THOUGHT THAT I WAS BEING "TOO HYPER TECHNICAL" IN THIS REGARD.

I ALSO INFORMED HIM THAT I HAD PERSONALLY VIEWED THE LOCATION OF THE SEARCH WARRANT, AND THAT I HAD DIFFICULTY BELIEVING THAT DISCERNABLE TIRE TRACKS COULD

ACTUALLY BE SEEN ALONG THE ENTIRE LENGTH OF THIS ROADWAY. HE THEN STATED THAT AFTER SPEAKING WITH THE DEPUTIES (SIMPKINS AND SPITULSKI) THAT THE WORDING OF THE WARRANT SHOULD BE "MODIFIED" TO STATE THAT THEY OBSERVED "TIRE GOUGES", CAUSED BY THE RIMS OF THE STOLEN TRUCK SCRAPING ALONG THE ROADWAY, AND NOT "TIRE TRACKS", AS STATED IN THE AFFIDAVIT. I ASKED HIM WHEN HE AND THE DEPUTIES DECIDED TO "MODIFY" THIS DESCRIPTION, BUT HE DID NOT RESPOND. THIS CONCLUDED OUR CONVERSATION.

Attorney or Party Without Attorney (Name and Address)	Telephone No.	For Court Use Only
RICHARD ESCOBEDO ESCOBEDO & ESCOBEDO Attorneys at Law 11401 E. Valley Boulevard, Suite 214 El Monte, CA 91731 Attorney for (Name):	(626) 339-3705	
Insert name of court, judicial district or branch court, if any, and post office and street address SUPERIOR COURT OF CALIFORNIA EAST 400 Civic Center Plaza same Pomona, California 91766		
Title of Case: PEOPLE OF THE STATE OF CALIFORNIA VS. RANDY LONGORIA		
SUBPENA (CRIMINAL OR JUVENILE, ☐ **DUCES TECUM**		Case Number: KA045491-02

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (NAME): Deputy District Attorney RICHARD CEBALLOS

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below UNLESS you make a special agreement with the person named in item 3:

a. Date: 03/16/00 Time: 8:30 a.m. ☒ Dept.: ☐ Div.: ☐ Room:
b. Address: 400 Civic Center Plaza Pomona, CA 91766

2. AND YOU ARE

   a. ☒ ordered to appear in person.

   b. ☐ not required to appear in person if you produce the records described in the accompanying affidavit and a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose your original declaration with the records. Seal them. (2) Attach a copy of this subpena to the envelope or write on the envelope the case name and number, your name and date, time, and place from item 1 (the box above). (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party shown at the top of the form.

   c. ☐ ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpena. The procedure authorized by subdivision (b) of

section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpena.

d. ☐ ordered to make the original business records described in the accompanying affidavit available for inspection at your business address by the attorney's representative and to permit copying at your business under reasonable conditions during normal business hours.

3. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name: RICHARD ESCOBEDO Attorney at Law b. Telephone Number 626.339.3705

4. **WITNESS FEES:** You may be entitled to witness fees, mileage, or both, in the discretion of the court. Contact the person named in item **3 AFTER** your appearance.

DISOBEDIENCE OF THIS SUBPENA MAY BE PUNISHED BY A FINE, IMPRISONMENT, OR BOTH. A WARRANT MAY ISSUE FOR YOUR ARREST IF YOU FAIL TO APPEAR.

For Court Use Only	Date: 03/14/00 ▶ /s/ Richard Escobedo (SIGNATURE OF PERSON ISSUING SUBPENA) RICHARD ESCOBEDO (TYPE OR PRINT NAME) Attorney at Law (TITLE)

Law Office of Escobedo & Escobedo
RICHARD ESCOBEDO, Esq. SBN #145271
11401 E. Valley Blvd., Ste. 214
El Monte, CA 91731
(626) 339-3705

Attorney for Defendant RANDY LONGORIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. RANDY LONGORIA, Defendant	CASE NO. KA045491-02 POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR HEARING TO TRAVERSE WARRANT

MEMORANDUM OF POINTS AND AUTHORITIES

I

THE DEFENDANT IS ENTITLED TO CONTROVERT FACTUAL STATEMENTS CONTAINED IN AN AFFIDAVIT IN SUPPORT OF A WARRANT

Penal Code Section 1539 provides in part:

> "(a) If a special hearing be held in the superior court pursuant to Section 1538.5, or if the grounds on which the warrant is issued be controverted and a motion to return property be made . . . , the judge or magistrate must proceed to take testimony in relation thereto. . . ."

Penal Code Section 1540 provides in part:

> "If it appears that the property taken is not the same as that described in the warrant, or that there is not probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken."

In *Franks v. Delaware*, (1978) 438 U.S. 154, 57 L Ed 2d 667, 98 S Ct 2674, the United States Supreme Court held that a defendant may challenge the veracity of a facially valid warrant affidavit upon a specific primary showing the: 1) the affiant made statements that were deliberately false or in reckless disregard of the truth; and 2) the affidavit's remaining content is insufficient to justify a finding of probable cause. The *Franks* court stated the guiding principle as follows:

> " . . . where the defendant makes a substantial preliminary showing that a false statement knowingly or intentionally, or with reckless disregard for the truth, was included by the affiant

> in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request." *Frank v. Delaware* (1978) 438 US 154, 155-156, 57 L Ed 2d 667, 98 S Ct 2674.)

The rule of *Franks* is applicable to "affidavits marred by omissions of facts. . . ." (*United States v. Lefkowitz* (1980), CA 9 Cal) 618 F2d 1313, 1317 n 4., 80-2 USTC P 9722, 45 AFTR 2d 80-1627.)

In the case at bar, a vehicle was found on the street in an unincorporated portion of Los Angeles county. This area is known as Basset. The particular street (Third) is located in an area the borders and industrial park and residential homes. It is with regular occurrence that stolen vehicles are abandoned in this area and it is considered a high crime area only being one block south of Valley Boulevard. Los Angeles County Sheriff Deputies SIMPKINS and SPITULSKI observed that the truck was missing its engine and doors and it was readily apparent that the truck had been stripped for parts and was in all likelihood stolen. According to the search warrant affidavit written by supervising L.A.C.S. Deputy K. WALLS, the two Deputies "saw tire tracks leading back to a fence at the end of a long driveway that ran E/B from the east side of 3rd street. The tire tracks appeared to match the tread pattern of the tires currently mounted on the truck." In actuality, the so called "driveway" is a private road that is approximately 25 feet wide and approximately 200 feet long. Approximately 6-8 residential homes border the road. The occupants of these homes use this road daily for access to their homes. More importantly, this road surface consists of asphalt, gravel and broken asphalt. Given the dry condition of the road in

August, it would very unlikely that one could trace tire tracks 200 feet over an asphalt and gravel road surface that is traveled over numerous times a day by 10-12 various vehicles.

II

IF THE BURDEN ON THE DEFENDANT TO ESTABLISH THAT MISSTATEMENTS IN THE AFFIDAVIT ARE INTENTIONAL OR RECKLESS IS BY PREPONDERANCE OF THE EVIDENCE

In *People v Cook* (1978) 22 Cal 3d 67, 89, 90-19, 148 Cal Rptr 605, 583 P2d 130, the California Supreme Court held that the burden on the defendant of establishing that misstatements in the affidavit are intentional is by a preponderance of the evidence.

> "[W]hen the defendant charges that the misstatements were deliberate, i.e., that the affiant knew they were false at the time he made them[,] . . . the defendant should retain both the burden of producing evidence of the affiant's knowledge of falsity (Evid. Code, Sec. 550) and the ultimate burden of proof on that issue (Evid. Code, Sec. 500).
>
> "[T]he defendant need only prove the affiant's knowledge by a preponderance of the evidence. . . .
>
> "[A] sworn misstatement made with conscious indifference to whether it is true or false is deemed the equivalent of an allegation actually known to be untrue. . . .

> "[I]t is not necessary to further prove the affiant made the allegations with the specific intent to deceive the magistrate."

In this matter, the Deputies stated that they observed 3 white spoke-type wheels and tires and a truck liner on the property at the end of a "driveway". What the Deputies failed to mention was that the property behind the fence is littered with hundreds of vehicle parts. When the search warrant was executed, several vehicle parts were seized, but none matching the stolen vehicle. The Deputies were on a "fishing expedition" and took advantage of the opportunity provided by the discovered stolen truck to obtain a search warrant. One must ask why would law enforcement officers when executing a search warrant seeking stolen vehicle parts come prepared with a trained narcotic sniffing canine.

III

INTENTIONAL OR RECKLESSLY FALSE AVERMENTS IN THE AFFIDAVIT MUST BE EXCISED AND THE REMAINING PARTS OF THE AFFIDAVIT RETESTED FOR PROBABLE CAUSE

In *People v Cook* (1978) 2 Cal 3d 67, 87, 148 Cal Rptr 605, 583 P2d 130, the Supreme Court explained the procedure to be followed upon the finding of intentionally false averment in an affidavit in support of a warrant:

> "[A]lthough the court can excise the intentionally false allegations it cannot presume the remainder to be true. Lacking a reliable factual basis in the affidavit, the court has no alternative under settled constitutional principles but

* * *

A warrant is invalid if, after the false statements are excised, the affidavit's remaining content is insufficient to establish probable cause.

Without the statements concerning the "tire tracks" leading to the property in question, there is no other connection between the stolen truck and the property.

DEFENDANT ASKS PERMISSION TO FILE SUPPLEMENTAL POINTS AND AUTHORITIES AFTER THE HEARING ON THIS MOTION

Defendant requests permission to file a supplemental memorandum of points and authorities after the hearing on this motion, to address the testimony at the hearing and the prosecution's arguments. Enclosed is copy of the search warrant affidavidt [sic] in question.

CONCLUSION

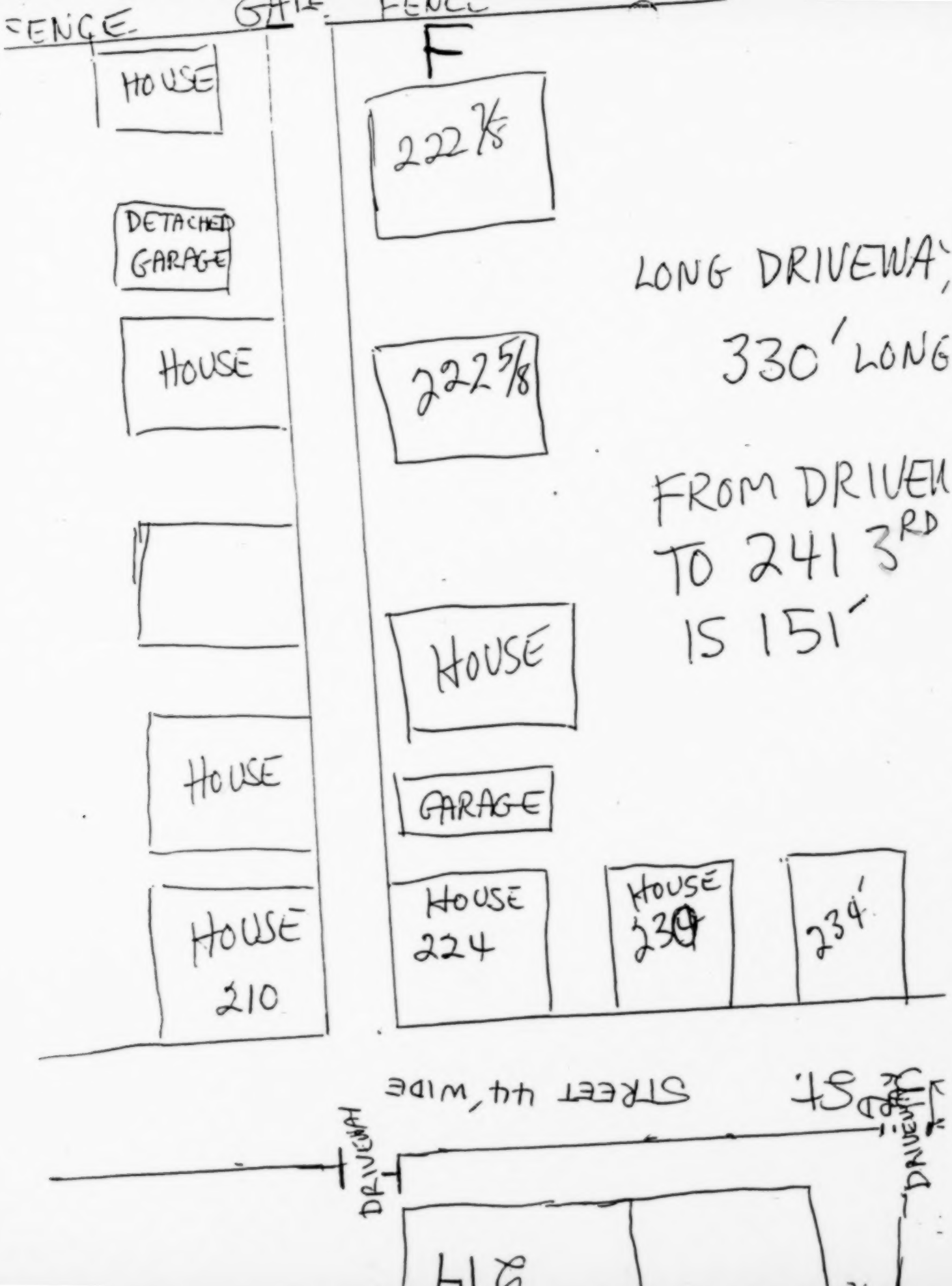
Based on the foregoing, the defense requests that this Court find the statements discussed above to be deliberately false, or made in reckless disregard of the truth, to find that what remains in the affidavit after excising the false statements is insufficient to support a finding of probable cause, and that the court quash the warrant issued August 4, 1999 by Judge T. Falls, and suppress all evidence seized under the authority of that warrant.

DATED: December 10, 1999

Respectfully submitted,

Law Offices of Escobedo & Escobedo

By: /s/ Richard Escobedo
RICHARD ESCOBEDO
Attorney for RANDY LONGORIA


FENCE
GATE
FENCE
HOUSE
F
222 1/8
DETACHED GARAGE
LONG DRIVEWAY
330' LONG
HOUSE
222 5/8
FROM DRIVEWAY TO 241 3RD IS 151'
HOUSE
HOUSE
GARAGE
HOUSE 210
HOUSE 224
HOUSE 230
234'
STREET 44' WIDE
St.
DRIVEWAY
DRIVEWAY

DEPARTMENT OF THE DISTRICT ATTORNEY
GRIEVANCE RESPONSE FORM

LEVEL 2

Employee Name RICHARD CEBALLOS
Position Deputy District Attorney III

Level 2 Supervisor GEORGE KNOKE
Position Director, Branch & Area, Ops., Reg. II

Date Grievance Form received at Level 2 September 8, 2000

Summary of Facts (attach additional sheets as needed):

Decision (attach additional sheets as needed):

On September 5, 2000 Richard Ceballos filed a grievance against Frank Sundstedt, Head Deputy of the Pomona Branch, and Carol Najera, Assistant Head Deputy of that Branch. The first level meeting was bypassed upon the request of Mr. Ceballos.

I, as Director of Branch and Area Operations, Region II, was determined to be the appropriate person to handle the second level of the grievance, being the immediate supervisor over the Pomona Branch.

The nature of the grievance can be summarized as follows:

1. That Frank Sundstedt and Carol Najera deliberately, willfully and intentionally engaged in harassment, retaliation and reprisal against Mr. Ceballos as the result of his reporting that certain police officers may have fabricated probable cause to obtain a search warrant in the case of *People v. Michael*

Cuskey, et al, KA045491, and his having testified at a Penal Code Section 1538.5 hearing in that case.

2. That Carol Najera attempted to dissuade Mr. Ceballos from testifying at the hearing.

3. That Frank Sundstedt and Carol Najera created and maintained a hostile work environment for Mr. Ceballos as a result of his actions in the above case.

4. That Frank Sundstedt and Carol Najera demoted Mr. Ceballos from Calendar Deputy to that of trial deputy as a result of his actions in the above case.

5. That Frank Sundstedt and Carol Najera reassigned a murder case previously assigned to him as a result of his actions in the above case.

6. That Frank Sundstedt and Carol Najera refused to assign Mr. Ceballos new murder cases as a result of his actions in the above case.

7. That Frank Sundstedt and Carol Najera transferred Mr. Ceballos to the El Monte Area Office as a result of his actions in the above case.

Mr. Ceballos also alleged that Frank Sundstedt and Carol Najera willfully and maliciously influenced the decision to deny him a Grade IV promotion as a result of his actions in the above case. It was determined that this allegation was not a proper subject matter of the grievance procedure and was not considered or addressed by me.

On September 20, 2000 I held a meeting with Mr. Ceballos. Mr. Ceballos appeared along with Dinko Bozanich, acting as his employee representive. Also in attendance was Steve Sowders, Head Deputy of the Employee relations Division. Upon agreement of all parties, the meeting was tape-recorded.

The events forming the basis for the grievance will be set forth in chronological order, I interviewed Frank Sundstedt and Carol Najera in Pomona on September 25, 2000. I am inserting their comments concerning these events as they unfold. These statements are in italics. I have inserted some comments of my own that did not result from interviews. These are in Bold.

At the meeting with me, Mr. Ceballos presented verbally that which is set forth in his written grievance. The triggering event, according to Mr. Ceballos, was the submission of a memo on or about March 2, 2000, (a copy of this memo is attached as Exhibit 1 to his Grievance) to Frank Sundstedt indicating his belief that certain police officers had fabricated probable cause in order to obtain a search warrant. Mr. Ceballos requested permission to dismiss the case.

Prior to that time he had worked under Frank Sundstedt for approximately two years and had been made, as a Grade III, a Calendar Deputy, a normal Grade IV position, by Frank Sundstedt, a position he has occupied for at least one year prior to this memo being submitted to Frank Sundstedt.

Mr. Sundstedt recalls that Mr. Ceballos presented a memo, which contained many "conclusionary" statements. He suggested that the memo be rewritten since he intended to send it to the Sheriff's Department. The memo attached to

the grievance is the second or rewritten memo. It was this second memo which was sent to Captain Binkley of the Sheriff's department.

It was Mr. Ceballos' impression that Frank Sundstedt agreed with his inclusion because Mr. Sundstedt told him to see that a co-defendant in that case, who had already been sentenced to jail time as a condition of probation, be released from custody. *Mr. Sundstedt stated he was considering dismissal of the case, and directed that this defendant be released from custody pending a determination of the issues presented in Mr. Ceballos' memo. It was Mr. Sundstedt's feeling that this defendant should not remain in custody if there was a basis, in fact, for the conclusions drawn by Mr. Ceballos. It was his intention to investigate the matter further. Mr. Sundstedt agreed to a meeting with representatives of the Sheriff's Department to get more information concerning the information in the Ceballos memo.*

On or about March 9, 2000 a meeting was held in Frank Sundstedt's office attended by Frank Sundstedt, Carol Najera, Deputy District Attorney Steve Gallon, the deputy who had handled the *Cuskey* case before Mr. Ceballos became involved with it and who visited the location in controversy in the *Cuskey* case with Mr. Ceballos, Captain Binkley and Lieutenant Barstow of the Industry Station, and Deputy Sheriff Keith Walls, the affiant of the search warrant in question.

Mr. Ceballos states that during the meeting he was verbally attacked by Lieutenant Barstow and that neither Frank Sundstedt or Carol Najera did anything to stop or interrupt this attack. He states Ms. Najera told him during the meeting not to say anything and to just listen.

Ms. Najera denies having said this. Mr. Sundstedt characterized the meeting as a "heated discussion" between Deputy Walls and himself. He does not recall Mr. Ceballos saying anything during the meeting. He stated there was no criticism of Mr. Ceballos.

Deputy District Attorney Steve Gallon appeared at the second level interview with me at the request of Mr. Ceballos. Dinko Bozanich questioned him. He didn't recall who invited him to attend the meeting on March 9, 2000. *Mr. Sundstedt and Ms. Najera stated they did not invite Deputy Gallon to attend the meeting. They felt his attendance was requested by Mr. Ceballos.* He recalled no specifics of the meeting. He stated that nothing at the meeting was remarkable or memorable.

According to Mr. Ceballos, Captain Binkley expressed a concern that a civil case would be filed against the Sheriff's Department should the case be dismissed and that a civil rights suit had been filed by Mr. Cuskey against one of the deputies involved. Mr. Ceballos felt that the civil rights suit against the deputy should have been revealed to the magistrate signing the warrant.

A motion to traverse the warrant had been filed by the defense. Mr. Ceballos states that at the conclusion of the meeting Frank Sundstedt informed Captain Binkley that the People would proceed with the hearing on the motion to traverse the warrant. *Mr. Sundstedt states that he told the representative of the Sheriff's department he would get back to them.*

After the meeting Mr. Ceballos asked Mr. Sundstedt why he had reversed himself and told him that it appeared he was "kowtowing" to the Sheriff's Department. *Mr. Sundstedt states that this conversation did not occur.*

Mr. Sundstedt states that after the meeting he conferred with Ms. Najera. It was determined that the hearing on the motion to traverse should be held to see how the officers would testify under oath. Mr. Sundstedt asked Ms. Najera to handle the hearing.

The motion to traverse was set for March 20, 2000. On or about March 14, 2000 Mr. Ceballos informed Mr. Sundstedt and Ms. Najera that he had been subpoenaed as a witness by the defense.

Before that hearing an issue arose as to what material should be turned over to the defense in the way of discovery. Mr. Ceballos felt portions of his original memo of March 2, 2000 together with an addendum dated March 6, 2000 containing statements made by Deputy Walls should be turned over to the defense. According to Mr. Ceballos Ms. Najera instructed him to write a new memo omitting everything except the statements made to him by Deputy Walls, and omitting his own observations of the scene. Mr. Ceballos told Ms. Najera the proper way to proceed was to redact the work product in the memos. According to Mr. Ceballos, Ms. Najera became incensed, told him he was wrong and ordered him to prepare a new memo. Mr. Ceballos told Ms. Najera she was wrong, and he would not do as she ordered.

Ms. Najera stated when the issue arose she consulted George Palmer who suggested that a redacted version was the proper approach. Ms. Najera denies that there was the discussion described by Mr. Ceballos, or that she ordered him to prepare a new memo.

Mr. Ceballos describes a meeting with Ms. Najera on or about March 16, 2000. At that meeting the issues concerning the motion to traverse were discussed and Ms. Najera

told Mr. Ceballos that his assessment of the facts was wrong. Mr. Ceballos reiterated his position and stated that he would state his opinion that the affidavit for the search warrant contained fabrications. Mr. Ceballos stated that Ms. Najera stated, "If you keep thinking like that . . . talking like that, you're going to get yourself in trouble with this office". Mr. Ceballos felt this was an attempt to dissuade him from testifying.

Ms. Najera recalls some conversations concerning the issues with Mr. Ceballos, and questioned his analysis. She denies having ever made the statement quoted above attributed to her by Mr. Ceballos. She denied ever having attempted to dissuade Mr. Ceballos from testifying.

Section 26540 of the Government Code provides:

"A district attorney shall not during his incumbency defend or assist in the defense of, or act as counsel for, any person accused of any crime in any county."

This section applies to Deputy District Attorneys.

On March 20, 2000 the motion to traverse the warrant was heard. **A copy of the affidavit in question is attached.**

In order to understand the issues I will summarize the disputed issues. A stripped truck was discovered on an asphalt street. One of the wheels had a flat tire with the rim overriding the tire. Running perpendicular to this street, a short distance from where the truck was found, is an "access road" (my terminology) which ends at the defendant's property. This "access road" is partially asphalt and partially dirt. The dirt portion is the closest to the

defendant's property. Other dwellings adjoin the "access road". The affidavit describes this "access road" as a driveway.

The affidavit further states, "The above deputies attempted to locate where this vehicle came from. They saw tire tracks leading back to a fence at the end of a long driveway that ran E/B from the east side of 3rd St. The tire tracks appeared to match the tread pattern of the tire currently mounted on the truck."

Mr. Ceballos in his memo dated March 2, 2000 characterizes this "access road" as a "roadway" available to other residents and that reference to it as a "driveway" was misleading. He also stated in his memo, "Furthermore, it appears unlikely that the Deputies could actually discern visible tire tracks along the entire distance of this roadway or even on the actual street." This conclusion was based on his personal observation of the scene.

Deputy District Attorney Steven Gallon accompanied Mr. Ceballos when he examined the scene. Upon being questioned by Mr. Bozanich on September 20, 2000 Mr. Gallon stated that he could not conclude from his observations when he accompanied Mr. Ceballos to the scene in March, 2000 whether tire tracks would have been visible on August 3, 1999.

I have read the entire transcript of the motion to traverse, a copy of which is attached. It consists of 151 pages. Ms. Najera's questioning of Mr. Ceballos covers four pages, page 96 through page 99.

Mr. Ceballos states that Ms. Najera allowed Deputy Walls to remain in the courtroom seated next to her during the hearing. *Ms. Najera states that is true, because he was the*

investigating officer. Mr. Ceballos stated she treated him as if he was a "hostile witness" and became upset at some of his responses. *Ms. Najera admits she became exasperated because Mr. Ceballos was not answering the questions asked.* The transcript speaks for itself.

Mr. Ceballos states that after the meeting Ms. Najera called him into her office and told him she had wanted to shut him up. *Ms. Najera denies this.*

The court denied the motion to traverse. The court's reasoning is set forth in the transcript, pages 137 through 141. Part of the basis of this conclusion was videotape of the scene introduced into evidence by the defense. This tape, according to the court, clearly shows tread marks in the location described by the observing deputies. A discussion of this appears on pages 84 and 104 through 106 of the transcript.

The Court determined the term "driveway" was not misleading (pages 102 through 104 of the transcript). On pages 138 and 139 of the transcript the judge states, " . . . they saw tire tracks leading back to a fence at the end of a long driveway. And I don't know why you are disturbed about the word, driveway, Mr. Escobedo."

The defendant who had been released from custody was present at the hearing. At the conclusion of the hearing Ms. Najera asked that he be remanded to custody. The court changed the condition of probation to "time served", and ordered this defendant to report to the probation department.

At some time after the hearing Mr. Sundstedt stated that Mr. Ceballos came to his office and stated that he "didn't know where he stood". Mr. Sundstedt stated to him that he was glad Mr. Ceballos had brought the matter to his attention, and everything was fine. After that Mr. Sundstedt states he gave no further thought to the case.

In his grievance Mr. Ceballos states that Mr. Sundstedt and Ms. Najera "demoted me from the position of Calendar Deputy to that of trial deputy". As stated above, Mr. Ceballos had been a calendar deputy for at least a year preceding the events enumerated in his grievance.

Mr. Sundstedt states that prior to April 10, 2000 the Pomona Branch had four calendar courts. Two courts had Grade IV calendar deputies, and two courts Grade III calendar deputies, one of which was Mr. Ceballos. On April 10, 2000 two calendar courts were eliminated. Mr. Sundstedt decided that the two remaining courts should have two calendar deputies each. On April 7, 2000 Mr. Ceballos was placed as co-calendar deputy with Deputy Michael Grosbard in Department N. This is born out by the memo from Michael Grosbard, attached, which was submitted by Mr. Ceballos.

Mr. Sundstedt also stated that filing deputy positions were always difficult to staff. He attempted to rotate deputies through these positions for six-month periods. Kathleen Cady, a Grade III deputy at the time had been filling one filing deputy position. He stated it was understood that Mr. Ceballos was next in line to fill a filing position for a six-month period. When Ms. Cady's time was up, Mr. Ceballos was the next in line to file for a six-month period. However, at that time, he became aware of a trial deputy whose pregnancy prevented her continuing to do court duty. She

was assigned the filing position, giving Mr. Ceballos a reprieve.

Mr. Sundstedt stated that Ms. Cady was made co-calendar deputy with Michael Grosbard because she needed experience in running a calendar. **Ms. Cady was transferred from the Family Violence Division to Pomona on April 5, 1999. She had been in the Family Violence Division since October 1994. I do not believe she had ever been a felony calendar deputy before. It was at this time that Mr. Ceballos continued as a trial deputy in that court. Attached is an assignment roster dated July 12, 2000 showing this status.**

Mr. Ceballos states that on August 28, 1999 Ms. Najera gave him a choice of filing misdemeanors in Pomona, or to be transferred to El Monte as a felony-filing deputy. Mr. Ceballos refused to choose. He felt filing misdemeanors was not suitable for one with his experience, and that transfer to El Monte would require a longer commute. **Mr. Ceballos lives in Pomona.** Since Mr. Ceballos did not choose, Ms Najera transferred him to El Monte effective September 5, 2000. Mr. Ceballos felt this was punitive in nature.

Mr. Sundstedt stated that misdemeanor filings in Pomona were getting behind because of a part-time deputy handling them. It was his intention to Transfer Debra Scott, another part-time deputy, from El Monte to handle misdemeanor filings. That would leave only Deputies Jaime Corral and Eugene Hanks in El Monte as filing deputies. Mr. Hank's duties were limited to filing misdemeanors. He felt the Deputy in Charge was filing too much, and needed to devote more time to supervision of new deputies assigned to that office. He also felt that two felony-filing deputies

would then be required. Since Mr. Ceballos was next in line to be rotated into a filing position, he felt he should be transferred to El Monte as a felony-filing deputy. He turned the filing deputy assignments over to Ms. Najera. He felt that the only reason Ms. Najera gave Mr. Ceballos a choice in assignments was to be nice to him since he lived close to the courthouse in Pomona.

Ms. Najera states that she did give Mr. Ceballos a choice of assignments, but only because those were the two vacancies required to be filled.

Mr. Sundstedt pointed out that while in El Monte Mr. Ceballos took over the duties of Early Disposition Deputy while Grade IV Harold Hofman was on vacation.

Mr. Ceballos states in his grievance that Frank Sundstedt and Carol Najera reassigned a murder case previously assigned to him as the result of his actions previously described. *Mr. Sundstedt stated a number of Grade II deputies were to be transferred to the Juvenile Division shortly, and he wanted them to experience the trial of a murder case before their departure. Mr. Sundstedt stated he did not feel Mr. Ceballos objected to the transfer of the case at the time. Ms. Najera stated she was instructed to find a murder case for a Grade II deputy to try before being transferred to Juvenile. It was her recollection that Mr. Ceballos had one case that could be reassigned to a Grade II, and that she reassigned the case.*

Mr. Ceballos also states that for the same reasons he was assigned no new murder cases after testifying at the hearing on the motion to traverse, although they were assigned to less experienced deputies. **Between the time of the hearing on the motion to traverse, March 20, 2000, and the transfer of Mr. Ceballos to El Monte,**

September 5, 2000 there were only four murder informations filed in Pomona. During that period there were 13 trial deputies to whom murder cases could have been assigned. *Mr. Sundstedt denied there had been any effort to deprive Mr. Ceballos of assignment of murder cases.*

Mr. Ceballos also states in his grievance that as a result of the position he had taken in the *Cuskey* matter, Frank Sundstedt and Carol Najera created and maintained a hostile work environment for him. Mr. Grosbard in his memo stated that Ms. Najera ignored Mr. Ceballos in the hallways and was "giving him the silent treatment". Mr. Grosbard stated that Mr. Sundstedt began displaying the same attitude. *Mr. Sundstedt denied this allegation and stated that he noticed that Mr. Ceballos appeared to be avoiding him. Mr. Ceballos would have other deputies drop his files off in Mr. Sundstedt's office rather than doing it himself as he had done on previous occasions. Ms. Najera also denied this allegation, and stated she in fact had gone to and spoken at Mr. Ceballos' farewell luncheon. Mr. Sundstedt is expecting the return of Mr. Ceballos to Pomona at the end of his six-month filing period.* **Mr. Sundstedt approved time off for Mr. Ceballos to attend an out of state seminar from June 3, 2000 to June 10, 2000 with full salary.**

Mr. Ceballos submitted for my consideration a memo from Deputy Michael Grossbard and a letter from one of the defense attorneys, Richard Escobedo. Both are attached. In addition he requested in writing that I interview Sharon Fox, the court reporter of the hearing on the motion to traverse, Geoffrey Pope, defense attorney for Mr. Cuskey, and Judge Milton, the hearing magistrate on the motion to traverse the warrant.

I went to Pomona to attempt to interview Sharon Fox and Judge Milton. Ms. Fox was unavailable and was not interviewed. Judge Milton felt it was inappropriate for him to comment in any way; so he was not interviewed. I did not make any attempt to interview Geoffrey Pope.

At the conclusion of the interview I asked Mr. Ceballos if he still wanted to return to the Pomona Branch. He replied in the affirmative.

I find that neither Frank Sundstedt nor Carol Najera engaged in harassment, retaliation or reprisal against Mr. Ceballos as the result of his reporting that certain police officers may have fabricated probable cause to obtain a search warrant in the case of *People v. Michael Cuskey*, et al, KA045491, and his having testified at a Penal Code Section 1538.5 hearing in that case.

I find that the complaint that Carol Najera attempted to dissuade Mr. Ceballos from testifying at the above hearing is unfounded.

I find that neither Frank Sundstedt nor Carol Najera created or maintained a hostile work environment for Mr. Ceballos as result of his actions taken in the above case.

I find that neither Frank Sundstedt nor Carol Najera demoted Mr. Ceballos from Calendar Deputy to that of trial deputy as a result of his actions in the above case.

I find that neither Frank Sundstedt nor Carol Najera reassigned a murder case previously assigned to him as a result of his actions in the above case.

I find that neither Frank Sundstedt nor Carol Najera refused to assign Mr. Ceballos new murder cases as a result of his actions in the above case.

I find that neither Frank Sundstedt nor Carol Najera transferred Mr. Ceballos to the El Monte Area Office as a result of his actions in the above case.

Therefore, this grievance is denied.

Date Grievance Form and Level 2 Response returned to employee: 10/05/00 by U.S. Mail

Signature of Level 2 Supervisor: George Knoke

Supervisor's name typed or printed: George Knoke
Position Director, Branch & Area Ops., Region II

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GIL GARCETTI, FRANK SUNDSTEDT,
and CAROL NAJERA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD CEBALLOS,
Plaintiff,
vs.
GIL GARCETTI, individually, and in his Official Capacity, FRANK SUNDSTEDT, Individually, and in his Official Capacity, CAROL NAJERA, Individually and in her Official Capacity, COUNTY OF LOS ANGELES, A Municipal Corporation, and DOES 1 THROUGH 10, Inclusive,
Defendants.

) Case No.
) CV 00-11106 AHM (AJWx)
) Honorable A. Howard Matz
) **DECLARATIONS OF FRANK SUNDSTEDT, DON CLEM, NANCY DUKELLIS AND AMY (KUHNERT) GLAUDINI IN SUPPORT OF DEFENDANTS' REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF INDIVIDUAL ISSUES**
) **[Reply to Opposition to Motion for Summary Judgment Or, Alternatively, Summary Adjudication; and**

) **Defendants' Objections to Plaintiff's Evidence filed concurrently herewith]**
) Date: January 28, 2002
) Time: 10:00 a.m.
) Courtroom: 14

Defendants GIL GARCETTI, CAROL NAJERA and FRANK SUNDSTEDT submit the following Declarations of Frank Sundstedt, Don Clem, Amy (Kuhnert) Glaudini and Nancy Dukellis in support of their Reply to Opposition to Motion for Summary Judgment, or in the Alternative, for Summary Adjudication.

DATED: January 22, 2002 FRANSCELL, STRICKLAND, ROBERTS & LAWRENCE

By /s/ Jin S. Choi FOR
Cindy S. Lee
Attorneys for Defendants
GIL GARCETTI, FRANK SUNDSTEDT, and CAROL NAJERA

DECLARATION OF FRANK SUNDSTEDT

I, FRANK SUNDSTEDT, declare as follows:

1. I am a defendant in the above-captioned action which arises from alleged events which occurred when I was the Head Deputy District Attorney of the Pomona Branch Office. The matters stated herein are within my personal knowledge and, if duly sworn, I could and would competently testify thereto.

2. As Head Deputy District Attorney of the Pomona Branch Office, I determined, based on the number of felonies that were regularly filed in the El Monte (otherwise known as Rio Hondo) area office, that it be staffed with two full-time filing deputies, as was the case with each other area office of the Pomona Branch. Accordingly, in 1998, when Mike Davis, the only filing deputy at the time was transferred to a Los Angeles office, I assigned Leonard Torrealba and Ed Miller to serve as full-time filing deputies at the El Monte area office. Both Mr. Torrealba and Mr. Miller were Grade III deputies at the time that these assignments took effect. Thereafter, Mr. Torrealba was replaced by Jaime Hernandez, another Grade III deputy. When Mr. Miller requested to obtain more trial experience, as he had been a filing deputy for two years, his position was replaced by part-time deputy Deborah Scott, another Grade III deputy.

3. It was always my intent to have two full-time filing deputies in the El Monte area office just like each other area office of the Pomona Branch. The number of filings generated in each of these offices was about the same and each provided significant felony filings to the Pomona office for processing. Moreover, at no time did the Deputy in Charge of the El Monte area office ever advise me that a full-time deputy was not actually necessary. My experience with previous Deputies in Charge of the El Monte area office was that, due to the fact that the office had only one full-time filing deputy, they often had to file cases themselves which took valuable time away from their ability to mentor and supervise the new deputies in their offices.

4. Plaintiff Richard Ceballos was not the only Grade III deputy to ever have had a murder case taken away for

re-assignment. At least on one other occasion, a murder case assigned to a Grade III deputy, Connie Bugh was ultimately given to a Grade II deputy, Nancy Dukellis, to be tried. In other words, the *Perrin* case was not the only occasion where a murder case originally assigned to a higher grade deputy was ultimately given to a lower grade deputy for trial.

5. Mr. Ceballos' contention that he was the only calendar deputy from the Pomona Branch who was assigned to a filing deputy position in another district office is false, as evidenced by the assignment history of John Urgo, a senior Grade IV deputy. In approximately 1998, Mr. Urgo, who at that time was assigned as a calendar deputy at the Pomona Branch, was transferred to one of the courts at the Los Angeles Criminal Courts Building to work as a calendar deputy. However, sometime in 1999, Mr. Urgo was re-assigned to a full-time filing deputy position at the West Covina area office. My decision to assign Mr. Urgo to a filing deputy position, as opposed to a calendar deputy position, was dictated by the staffing needs of the Pomona Branch Office at that time. Subsequently, Mr. Urgo was re-assigned to the Pomona Branch to assume the responsibilities of a calendar deputy.

6. Moreover, Mr. Ceballos was initially given the option by Carol Najera to remain in Pomona and fill the full-time misdemeanor filing position or transfer to El Monte to fill the full-time felony filing position. Because Mr. Ceballos refused to choose, he was transferred to El Monte. If Mr. Ceballos had chosen to remain in Pomona to be a filing deputy, he certainly would not have been the only calendar deputy who was subsequently re-assigned to a filing deputy position. In fact, Amy Kuhnert (now Amy Glaudini), a Grade III deputy, was re-assigned as a filing

deputy after being a calendar deputy for approximately six months at the Pomona Branch.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 21st day of January, 2002, at Pasadena, California.

/s/ Frank E. Sundstedt
Frank Sundstedt

DECLARATION OF DON CLEM

I, DON CLEM, declare as follows:

1. I am a Deputy District Attorney for the Los Angeles District Attorney's Office, Grade Level IV, and have been so since August 2000. The matters stated herein are within my personal knowledge and, if duly sworn, I could and would competently testify thereto.

2. In March 1999, when I was a Grade Level III deputy, I was one of four calendar deputies in the Pomona Branch Office. Richard Ceballos was the other Grade Level III deputy who was a calendar deputy and the other two calendar deputies were Debra Passow and Michael Grossbard, both Grade Level IV deputies. When the Pomona courts consolidated in April 2000, Richard Ceballos became a co-calendar deputy with Michael Grossbard and I became a co-calendar deputy with Debra Passow.

3. Several months prior to the April 2002 consolidation of the courts, I was present when Frank Sundstedt advised both myself and Richard Ceballos that we were

the next Grade III deputies up to fill a filing position. I was transferred to the Auto Insurance Fraud Division in downtown Los Angeles in May 2000. At the time I was transferred to downtown, Richard Ceballos was still a co-calendar deputy with Michael Grossbard.

4. Felony and/or misdemeanor filings would not be outside the realm of a Grade Level III's workload. In fact, it was my understanding that the Head Deputy of Pomona staffed all filing positions in Pomona, El Monte and the Citrus courts.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 18th day of January, 2002, at Whittier, California.

/s/ Donald J. Clem
Don Clem

DECLARATION OF NANCY DUKELLIS

I, Nancy Dukellis, declare as follows:

1. I am a Deputy District Attorney for the Los Angeles District Attorney's Office, Grade Level III, and have been so since December 31, 1998. The matters stated herein are within my personal knowledge and, if duly sworn, I could and would competently testify thereto.

2. On August 4, 1997, I was assigned to the Pomona Branch Office. In May 2000, I had complications with my pregnancy which required me to be bedridden for two weeks. Due to my medical condition, I requested that I be

assigned to a filing position, which was granted by Frank Sundstedt. I remained a filing deputy in the Pomona Branch Office until November 2000.

3. Felony and/or misdemeanor filings would not be outside the realm of a Grade Level III's workload. In fact, it was common in the Pomona, El Monte and the Citrus Courts to rotate Grade III deputies to fill filing positions and Grade IIIs were routinely transferred based on the needs of the office.

4. It was and is not uncommon in the District Attorney's Office that felony cases would be taken away from a higher grade deputy and re-assigned to a lower grade deputy for a variety of reasons including case overload or to allow the lower grade deputies to obtain experience.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 22 day of January, 2002, at Pomona, California.

/s/ Nancy Dukellis
Nancy Dukellis

DECLARATION OF AMY (KUHNERT) GLAUDINI

I, AMY (KUHNERT) GLAUDINI, declare as follows:

1. I am a Deputy District Attorney for the Los Angeles District Attorney's Office, Grade Level III and have been so since January 1, 1999. The matters stated herein are within my personal knowledge and, if duly sworn, I could and would competently testify thereto.

2. In 1998, I was a trial deputy in the Pomona Branch Office where I was assigned to prosecute sexual assault cases. In March 1999, I was assigned to handle general felony trials in courtroom F. In approximately May 2000, I became a co-calendar deputy with Grade Level IV Deputy Deborah Passow and was assigned to courtroom F where I replaced Don Clem who was transferred to the Auto Insurance Fraud Division in downtown Los Angeles.

3. In November 2000, I became a filing deputy in the Pomona Branch Office.

4. Felony and/or misdemeanor filings would not be outside the realm of a Grade Level III's workload. In fact, it was common in the Pomona, El Monte and the Citrus Courts to rotate Grade III deputies to fill filing positions and Grade IIIs were routinely transferred based on the needs of the office.

5. It was and is not uncommon in the District Attorney's Office that murder cases would be taken away from one deputy and re-assigned to another deputy for a variety of reasons including case overload or to allow a particular deputy to obtain experience.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 18th day of January, 2002, at Pomona, California.

/s/ Amy Glaudini
Amy (Kuhnert) Glaudini

[Proof Of Service Omitted In Printing]